Supreme Court of India
State Of West Bengal vs Kesoram Industries Ltd. And Ors on 15 January, 2004
Author: R.C.Lahoti
Bench: V.N.Khare Cji, R.C.Lahoti, B.N.Agarwal, S.B.Sinha, A.R.Lakshmanan

CASE NO.:
Appeal (civil) 1532 of 1993

PETITIONER:
State of West Bengal

RESPONDENT:
Kesoram Industries Ltd. and Ors.

DATE OF JUDGMENT: 15/01/2004

BENCH:
V.N.Khare CJI & R.C.Lahoti & B.N.Agarwal & S.B.Sinha & A.R.Lakshmanan

JUDGMENT:

JUDGMENT DELIVERED BY:

R.C.LAHOTI, J.

S.B.SINHA, J.

WITH Civil Appeal Nos. 3518-3519 and 5149-54 of 1992, 1532-1533 and 2350 of 1993 and 7614 of 1994 and C.A. Nos. 297, 298 and 299 of 2004 (Arising out of SLP (C) Nos. 3986 of 1993, 11596 and 17549 of 1994) with W.P. (C) Nos. 262, 515, 641 and 642 of 1997, 347 and 360 of 1999, 50 and 553 of 2000, 207, 288 and 389 of 2001 and 81 of 2003 and Civil Appeal Nos. 5027, 6643 to 6650 and 6894 of 2000 and 1077 of 2001 Decided On: 15.01.2004 JUDGMENT R.C. Lahoti, J.

This batch of matters, some appeals by special leave under Article 136 of the Constitution and some writ petitions filed in this Court, raise a few questions of constitutional significance centering around Entries 52, 54 and 97 in List I and Entries 23, 49, 50 and 66 in List II of the Seventh Schedule to the Constitution of India as also the extent and purport of the residuary power of legislation vested in the Union of India. Cesses on coal bearing land, levied in exercise of the power conferred by State Legislation, have been struck down by a Division Bench of the Calcutta High Court. In exercise of the same power conferred by State legislation whereunder cesses were levied on coal bearing land, cesses have also been levied on tea plantation land which are the subject-matter of writ petitions filed in this Court. The Bengal Brickfield Owners' Association have also come up to this Court by filing a writ petition under Article 32 of the Constitution, laying challenge to the same cesses levied on the removal of brick earth. These three sets of matters arise from West Bengal. The High Court of Allahabad has upheld the constitutional validity of cess levied in the State of U.P. on minor minerals which decisions are the subject-matter of civil appeals filed under Article 136 of the Constitution. For the sake of convenience, we would call these matters, respectively as (A) 'Coal Matters', (B) Tea Matters', (C) 'Brick Earth Matters', and (D) 'Minor Mineral Matter'. Inasmuch as

the basic constitutional questions arising for decision in all these matters are the same, all the matters have been heard analogously.

We would first set out the facts in brief and so far as relevant for appreciating the Issues arising for decision and thereafter deal with the same.

(A) Coal Matters A Division Bench of the Calcutta High Court has, vide its judgment dated 25.11.92 reported as Kesoram Industries Ltd. (Textiles Division) v. Coal India Ltd.., struck down certain levies by way of cess on coal as unconstitutional for want of legislative competence in the State Legislature. Feeling aggrieved, the State of West Bengal has come up in appeal by special leave The levies which are the subject matter of challenge are as under: This Cess Act, 1980 "Section 5 All immovable property to be liable liable to a read case and public works cess... From and after the commencement of this Act in any district or part of a district, all immovable property situate therein except as otherwise in (Section 2) provided, shall be liable to the payment of a road cess and a public works cess."

"Section 6 Cesses how to be assessed.

The road cess and the public works cess [shall be assessed--

(a) in respect of lands on the annual value thereof,

(b) in respect of all mines and quarries, on the annual dispatches therefrom, and,

(c) in respect of tramways, railways and other immovable property, on the annual net profit thereof, ascertained respectively as in this Act prescribed) and the rates at which such cesses respectively shall be levied for each year shall be determined for such year in the manner in this Act prescribed:

Provided that--

(1) the rates of such road cess and public works cess shall not exceed six paise and twenty-five paise respectively on each rupee of such annual value;

(2) the rates of each of such road cess and public works cess shall not exceed--

(i) fifty paise on each tonne of coal, minerals or sand of such annual dispatches, and

(ii) six paise on each rupee of such annual net profits, Explanation. For the purposes of this proviso, one tonne of coke shall be counted as one and a quarter tonne of coal."

2. West Bengal Primary Education Act, 1973 "78. Education cess. -- (1) All immovable properties on which road and public works cesses are assessed, [or all such properties which are liable to such assessment] according to the provisions of the Cess Act, 1880, shall be liable to the payment, of education cess. (2) The rate of the education cess shall be determined by the state Government by

notification and shall not exceed--

(a)[in respect of lands, other than a tea estate] ten paise on each rupee of the annual value thereof;

(aa) xxx xxx xxx

(b) in respect of coal mines [five per centum of the value of coal] on the dispatches therefrom;

(c) in respect of quarries and mines other than coal mines, [one rupee on each tonne of materials or minerals other than coal on the annual dispatches therefrom] Explanation. -- For the purpose of Clause (b) the expression 'value of coal' shall mean--

(i) in the case of dispatches of coal as a result of sale thereof, the prices charged by the owner of a coal mine for such coal, but excluding any sum separately charged as tax, cess, duty, fee or royalty for payment of such sum to Government to a local body, or any other sum as may be prescribed or

(ii) in the case of dispatches other than those referred to in item(i), the prices chargeable by the owner of a coal mine for such coal if they were dispatched as a result of sale thereof, but excluding any sum separately chargeable as tax, cess, duty, fee or--royalty for payment of such sum to Government or a local body or any other sum as may be prescribed: Provided that if more than one price is chargeable for the same variety of Coal, the maximum price chargeable for that variety of coal shall be taken as the basis of valuation for the purpose of this item."

3. West Bengal Rural Employment and Production Act, 1976. "Section 4. Rural employment cess, -- (1) On and from the commencement of this Act, all immovable properties on which road and public work cesses [are assessed or liable to be assessed] according to the provisions of the Cess Act, 1880, shall be liable to the payment of rural employment cess;

Provided that on raiyat who is exempted from paying revenue in respect of his holding under Clause (a) of Sub-section (1) of Section 23B of the West Bengal Land Reforms Act, 1955 shall be liable to pay rural employment cess. (2) The rural employment cess shall be levied annually

(a) [in respect of lands, other than a tea estate,] at the rate of six paise on each rupee of development value thereof;

(aa) xxx xxx xxx

(b) in respect of coal mines, at the rate of [thirty-five paise per centum] on each tonne of coal on the xxx dispatches therefrom;

(c) in respect of mines other than coal mines and quarries, [at the rate of fifty paise on each tonne of materials other than coal on the annual dispatches therefrom] Explanation. -- For the purpose of Clause (b) the expression Value of coal shall mean

(i) in the case of dispatches of coal as a result of sale thereof, the prices charged by the owner of a coal mine for such coal but excluding any sum separately charged as tax, cess, duty, fee or royalty for payment of such sum to Government or a local body, or any other sum as may be prescribed, or

(ii) in the case of dispatches, other than those referred to in item (i), the prices chargeable by the owner of a coal mine for such coal if they were dispatched as a result of sale thereof, but excluding any sum separately chargeable as tax, cess, duty, fee or royalty for payment of such sum to Government or a local body, or any other sum as may be prescribed:

Provided that if more than one price is chargeable for the same variety of coal, the maximum price chargeable for that variety of coal shall be taken as the basis of valuation for the purpose of this item."

All the three legislations above-referred to are State enactments. The provisions of the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976, which levied cess were amended by the West Bengal Taxation Laws (Amendment) Act, 1992 with effect from 1-4-1992. The text of the said Amendment Act is as follows: "West Bengal Act II of 1092 THE WEST BENGAL TAXATION LAWS (AMENDMENT) ACT, 1992. [Passed by the West Bengal Legislature] [Assent of the Governor was first published in the Calcutta Gazette, Extraordinary, of the 27th March, 1992.] An Act to amend the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976.

WHERAS it is expedient to amend the West Bengal Primary Education Act, 1973 and the West Bengal Rural" Employment and Production Act, 1976, for the purposes and in the manner hereinafter appearing:

It is hereby enacted in the Forty-third Year of the Republic of India, by the Legislature of West Bengal, as follows:-

1. (1) This Act may be called the West Bengal Taxation Laws (Amendment) Act, 1992.

(2) It shall come into force on the 1st day of April, 1992, (Section 2.)

2. In the West Bengal Primary Education Act, 1973,-- (1) in Section 78 for Sub-section (2), the following sub-section shall be substituted:

(2) The education cess shall be levied annually--

(a) in respect of land, except when a cess is leviable and payable under Clause (b) or Clause (c) of Sub-section (2A), at the rate of ten paise on each rupee of annual value thereof as assessed under the Cess Act, 1880;

(b) in respect of a coal-bearing land, at the rate of five per centum of the annual value of the coal-bearing land as defined in Clause (1) of Section 2 of the West Bengal Rural Employment and

Production Act, 1976;

(c) in respect of a Mineral-bearing land (other than coal-bearing land) or quarry, at the rate of one rupee on each tonne of minerals (other than coal) or materials despatched within the meaning of Clause (1b) of Section 2 of the West Bengal Rural Employment and Production Act, 1976, from such' mineral bearing land or quarry;

Provided that when in the coal-bearing land referred to in Clause (b) there is no production of coal for more than two consecutive years, such land shall be liable for levy of cess in respect of any year immediately succeeding the said two consecutive years in accordance with Clause (a): Provided further that where no despatch of minerals or materials is made during a period of more than two consecutive years from the mineral-bearing land or quarry as referred to in Clause (c), such land or quarry shall be liable for levy of cess In respect of any year immediately succeeding the said two consecutive years in accordance with Clause (a). Explanation. -- For the purposes of this chapter, "coal-bearing land' shall have the same meaning as in Clause (la) of Section 2 of the West Bengal Rural Employment and Production Act, 1976.

(2) In Section 78A,--

(a) for Clause (a), the following clause shall be substituted :- "(a) the education cess payable for a year under Sub-section (1) of Section 78 in respect of coal-bearing land referred to in Clause

(b) of Sub-section (2) of that section shall be paid by the owner of such coal-bearing land in such manner, at such intervals and by such dates as may be prescribed;";

(b) for Clause (b), the following Clause shall be substituted :-

(b) every owner of a coal-bearing land shall furnish a declaration relating to a year showing the amount of education cess payable by him under Clause

(a) in such form and by such date as may be prescribed and to such authority as may be notified by the State Government in this behalf in the Official Gazette (hereinafter referred to as the notified authority);";

(c) in Clause (c),--

(i) for the words "coal mine", wherever they occur, the words "coal-bearing land" shall be substituted;

(ii) for the word "return", wherever it occurs, the word "declaration" shall be substituted;

(iii) for the Word "period", wherever it occurs, the word "year" shall be substituted; :

(d) for Clause (d), the following clause shall be substituted:- "(d) the education cess under Clause (b) of Sub-section (2) of Section 78 shall be assessed by the notified authority In the manner prescribed, and if the declaration under Clause (b) is not accepted, the owner of the coal-bearing land shall be given a reasonable opportunity of being heard before making such assessment;";

(e) in Clause (g), for the words "coal mine" in the two places where they occur, the words "coal-bearing land" shall be substituted;

(f) for Clause (ga), the following clause shall be substituted:- "(ga) where an owner of a coal-bearing land furnishes a declaration referred to in Clause (b) in respect of any year by the prescribed date or thereafter, but fails to make full payment of education cess payable in respect of such period by such date, as may be prescribed under Clause (a), he shall pay a simple interest at the rate of two per centum for each English calendar month of default in payment under Clause (a) from the first day of such month next following the prescribed date up to the month preceding the month of full payment of such cess or up to the month prior to the month of assessment under Clause (d) in respect of such period, whichever is earlier, upon so much of the amount of education cess payable by him according to Clause (a) as remains unpaid at the end of each such month of default;"

(g) for Clause (gb), the following clause shall be substituted:- "(gb) where an owner of a coal-bearing land fails to furnish a declaration referred to in Clause (b) in respect of any year by the prescribed date or thereafter before the assessment under Clause

(d) in respect of such year and, on such assessment, full amount of education cess payable for such year is found not to have been paid in the manner and by the date prescribed under Clause (a), he shall pay a simple Interest at the rate of two per centum for each English caiendar month of default in payment under Clause (a) from the first day of the month next following the prescribed date for such payment up to the month preceding the month of full payment of education cess under Clause (a) or up to tha month prior to the month of such assessment under Clause (d), whichever is earlier, upon so much of the amount of education cess payable by him according to Clause (a) as remains unpaid at the end of each such month of default:

Provided that where the education cess payable under Clause (a) is not paid in the manner prescribed under that clause by the owner of a coal-bearing land, the notified authority shall, while making the assessment under Clause (d) in respect of a year, apportion on the basis of such assessment the education cess payable in accordance with Clause (a);";

(h) in Clause (gc), for the words "coal mine", the words "coal-bearing land" shall be substituted;

(i) in Clause (ge), for the words "coal mine", the words "coal-bearing land" shall be substituted;

(j) for Clause (gf), the following clause shall be substituted:- "(gf) interest under Clause (ga) or Clause (gb) shall be payable in respect of payment of education cess which falls due on any day after the 30th day of April, 1992, and interest under Clause (gc) shall be payable in respect of assessment for which notices of demand of education cess under Clause (d) are issued on or after the date of

commencement of the West Bengal Taxation Laws (Amendment) Act, 1992:

Provided that interest under Clause (ga) or Clause (gb) in respect of any period ended on or before the 31st day of March, 1992, or interest under Clause (gc) in respect of assessment, for which notices of demand of education cess under, Clause (d) are issued before the date of commencement of the West Bengal Taxation Laws (Amendment) Act, 1932, shall continue to be payable in accordance with the provisions of this Act as they stood immediately before the coming into force of the-aforesaid Act as if the aforesaid Act had not come into force;";

(k) in Clause (gh), for the words "coal mine", the words "coal-bearing land" shall be substituted;

(l) in Clause (gi), for the words "coal mine", the words "coal-bearing land" shall be substituted;

(m) in Clause (gj), for the words "coal mine", the words "coal-bearing land" shall be substituted;

"3. In the West Bengal Rural Employment and Production Act, 1976,-- (1) in Section 2, --

(a) for Clause (1), the following Clauses shall be substituted-- (1) "annual value of coal-bearing land", in relation to a financial year, means one-half of the value of coal, produced from such coal-bearing land during the two years immediately preceding that financial year, the value of coal being that as could have been fetched by the entire production of coal during the said two immediately preceding years, had the owner of such coal-bearing land sold such coal at the price or prices excluding the amount of tax cess, fee, duty, royalty, crushing charge, washing charge, transport charge or any other amount as may be prescribed, that prevailed on the date immediately preceding the first day of that financial year. Explanation. -- Where different prices are prevailing on the date immediately preceding the first date of that financial year for different grades or qualities of coal, the value of coal of each grade or quality produced during the two years immediately preceding that financial year shall be determined accordingly;

(1a) "coal-bearing land" means holding or holdings of land having one or more seams of coal comprising the area of a coal mine; (1b) 'despatched', for a financial year, shall, in relation to a mineral- bearing land (other than coal-bearing land) or a quarry, mean one-half the quantity of minerals, or minerals, despatched during two years immediately preceding that financial year from such mineral-bearing land or quarry; (1c) 'development value' means a sum equivalent to five times the annual value of land as assessed under the Cess Act, 1880; ' ;

(b) after Clause (3), the following clause shall be added and shall be deemed always to have been added ;-

'(4) 'year' means a financial year as defined in Clause (15) of Section 3 of the Bengal General Clauses Act, 1899;';

(2) in Section 4, for Sub-section (2), the following sub-section shall be substituted:-

"(2) The rural employment cess shall be levied annually--

(a) in respect of land, except when a cess is leviable and payable under Clause (b) or Clause (c) or Sub-section (2A), at the rate of six paise on each rupee of development value thereof;

(b) in respect of a coal-bearing land, at the rate of thirty-five per centum of the annual value of coal-bearing land as defined in Clause (1) of Section 2;

(c) in respect of a mineral-bearing land (other than coal-bearing land) or quarry, at the rate of fifty paise on each tonne of minerals (other than coal) or materials despatched therefrom:

(g) for Clause (gb), the following clause shall be substituted:- "(gb) where an owner of a coal-bearing land fails to furnish a declaration referred to in Clause (b) in respect of any year by the prescribed data or thereafter before the assessment under Clause

(d) in respect of such year and, on such assessment, full amount of rural employment cess payable for such year is found not to have been paid in the manner and by the date prescribed under Clause

(a), he shall pay a simple interest, at the rate of two per centum for each English calendar month of default in payment under Clause

(a) from the first day of the month next following the prescribed date for such payment up to the month preceding the month of full payment of rural employment cess under Clause (a) or up to the month prior to the month of such assessment under Clause (d), whichever is earlier, upon so much of the amount of rural employment cess payable by him according to Clause (a) as remains unpaid at the end of each such month of default:

Provided that where the rural employment cess payable under Clause (a) is not paid in the manner prescribed under that clause by the owner of a coal- bearing land, the notified authority shall, while making the assessment under Clause (d) in respect of a year, apportion on the basis of such assessment the rural employment cess payable in accordance with Clause

(a);";

(h) in Clause (gc), for the words "coal mine", the words "coal-bearing land" shall be substituted;

(i) in Clause (ge), for the words "coal mine", the words "coal-bearing land" shall be substituted;

(j) for Clause (gf), the following clause shall be substituted :- "(gf) Interest under Clause (ga) or Clause (gb) shall be payable in respect of payment of rural employment cess which falls due on any day after the 30th day of April, 1992, and Interest under Clause (gc) shall be payable in respect of assessments for which notices of demand of rural employment cess under Clause (d) are issued on or after the date of commencement of the West Bengal Taxation Laws (Amendment) Act, 1992:

Provided that interest under Clause (ga) or Clause (gb) in respect of any period ended on or before the 31st day of March, 1992, or interest under Clause (gc) in respect of assessments for which, notices of demand of rural employment cess under Clause (d) are issued before the date of commencement of the WestBengal Taxation Laws (Amendment) Act, 1992, shall continue to be payable in accordance with the provisions of this Act as they stood before the coming into force of the said Act as if the said Act had not come into force;";

(k) in Clause (gh), for the words "coal mine", the words "coal-bearing land" shall be substituted;

(l) in Clause (gl), for the words "coal mine", the words "coal-bearing land" shall be substituted;

(m) in Clause (gj), for the words "coal mine", the words "coal-bearing land" shall be substituted;

By order of the Governor R. BHATTACHARYYA, Secy, to the Govt. of West Bengal,"

It is the constitutional validity of the amendment in the two legislations, given effect to from 1,4,92, which was successfully impugned in the High Court and Is sought to be restored in these appeals.

The High Court has placed reliance mainly on two decisions of this Court, namely India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors., (Seven- Judges Bench decision) and Orissa Cement Ltd. v. State of Orissa and Ors. 1991 Supp.(1) SCC 430 (Three-Judges Bench decision). In both these decisions the levy of cess impugned therein was struck down as unconstitutional. The High Court of Calcutta has held that the levy impugned herein is similar to the one held ultra vires the legislative competence of the State twice by the Supreme Court, and hence the same was liable to be struck down.

In the opinion of the High Court, the cass is assessed and computed on the basis of value of coal produced from the coal bearing land, and coal bearing land has bean defined to mean land having one or more seams of coal comprising the area of a coal mine. Therefore, it is the production of coal from a coal mine which is the basic event for the levies and the cess is to be levied at 35 per centum of the 'annual value of the coal bearing land', which, as per definition, is directly related to the value of coal produced from the coal mines. The value of the coal has been related to the price. Explanation to Clause (1) of Section (2) of the 1976 Act, as amended by the 1992 Act, makes the real nature of the levy clearer by providing that where different prices are, prevailing on the relevant date for different grades or qualities of coal, the value of coal of each grade or quality shall be relevant, The High Court has concluded that the cess cannot be said to ba on land so as to be covered by Entry 49 in Schedule II. On behalf of the writ petitioner--respondents, the judgment of the High Court has been supported on similar grounds as were successfully urged before the High Court and which we shall presently deal with. On the other hand, the learned counsel for the appellant-State of West Bengal has submitted that having regard to the real nature of the levy, it clearly falls within the legislative field of Entry 49 in List II.

(B) Tea matters The writ petitions in which the validity of the levy of cesses relatable to tea estates is involved has an interesting legislative history behind it. By virtue of the West Bengal Taxation Laws (Amendment) Act, 1981, amendments were effected in the provisions of the West Bengal Primary Education Act, 1973, and the West Bengal Rural Employment And Production Act, 1976. Cesses were sought to be levied upon certain lands and buildings in the State for raising funds for the purpose of providing primary education throughout the State and to provide for employment in rural areas. Different rates in respect of lands, coal mines and other mines on annual basis were provided. Tea estates were carved out as a separate category and a separate rate was prescribed therefore as under. "Section 4(2) : The rural employment cess shall be levied annually -

(a) in respect of lands, other than a tea estate, at the rate of six paise on each rupee of development value thereof;

(aa) in respect of a tea estate-at such rate, not exceeding ruppes six on each kilogram of tea on the despatches from such tea estate of tea grown therein, as the State Government may, by notification in the Official Gazette, fix in this behalf :

Provided that in calculating the despatches of tea for the purpose of levy of rural employment cess, such despatches for sale made at such tea auction centers as may be recognized by the State Government by notification in the Official Gazette shall be excluded:

Provided further , that the State Government, may fix different rates on despatches of different classes of tea.

Explanation. - For the purpose of this section, 'tea' means the plant Camelia Sinensis (L) O. Kuntze as well as all verities of the product known commercially as tea made from the leaves of the plant Camelia Sinensis (L) O. Kuntze, including grsen taa and green tea leaves, processed or unprocessed."

Sub-section (4) was introduced in Section 4 which empowered the State Government to exempt "such categories of dispatches or such percentage of dispatches from the liability to pay the whole or any part of the rural employment cess or reduce the rate..." . By another amendment effected in 1982, the first proviso to Clause (aa) In Section 4(2) was omitted. Several notifications were-issued by the Government from time to time as contemplated by Section 4(2).

The constitutional validity of the abovesaid amendment was challenged successfully in Buxa Dooars Tea Company Ltd. and Ors. v. State of West Bengal and Ors. -. The decision is by a Bench of two learned Judges. The levy of csss having been struck down, the State became liable to refund the cess already collected and the relevant schemes which were financed by the cessess so collected came under jeopardy. The West Bengal Taxation Laws (Second Amendment) Act, 1989 was enacted, which is under challenge herein.

Section 2 of the impugned Act contains amendments to West Bengal Primary Education Act while Section 3 sets out the amendments to West Bengal Rural Employment and Production Act, 1976. As

mentioned hereinbefore, it would be enough to notice the gist of the amendments made in one of the two Acts of 1973 or 1976, since the amendments in both are identical.

Clause (aa) in Sub-section (2) of Section 4 was omitted with effect from 1.4.1981. After Sub-section (2), Sub-section (2-A) was introduced with retrospective effect from 1.4.1981. Subsection (2-A) reads : (2-A) The rural employment cess shall be levied annually, on a tea estate at the rate of twelve paise for each kilogram of green tea leaves produced in such estate.

Explanation. - For the purposes of this sub-section, Sub-section (3) and Section 4-B-

(i) "green tea leaves' shall mean the plucked and unprocessed green leaves of the plant Camelia Sinensis (L) O. Kuntze;

(ii) "tea estate' shall mean any land used or Intended to be used for growing plant Camelia Sinensis (L) O. Kuntze and producing green tea leaves from such plant, and shall include land comprised in a factory or workshop for producing any variety of the product known commercially as 'tea' made from the leaves of such-plant and for housing the persons employed in the tea estate and other lands for purposes ancillary to the growing of such plant and producing green tea leaves from such plant."

Clause (a) in Sub-section (3) was also substituted which had the effect of making the owner of the tea estate liable for the said cess. The other provisions require the owner of the tea estate to maintain a true and correct account of green tea leaves produced in the tea estate. Sub-section (4) was also substituted. The substituted Sub-section (4) empowered the State Government to exempt from the cess such categories of tea estates producing green tea leaves not exceeding two lakh fifty thousand kilograms and located in such area as may be specified in such notification. Section 4-5 contains the validation clause, it says that any cess collected for the period prior to the said Amendment Act shall be deemed to have been validly levied by it and collected under the Amended Act. Any assessment made or other proceedings taken in that behalf for assessing and collecting the said tax were also to be deemed to have been taken under the Amended Act.

Goodricke Group Ltd. and Ors. filed a writ petition under Article 32 of the Constitution of India in this Court. The levy of cesses under both the State enactments as amended by the West Bengal Taxation Laws (Second Amendment) Act, 1989 was impugned. A few matters raising a similar challenge and pending in various High Courts were also withdrawn to this Court. All the matters were heard and decided by a three-Judges Bench of this Court, vide judgment dated November 25, 1994, reported as Goodricke Group Ltd. and Ors. v. State of West Bengal and Ors. - (1995) Supp. 1 SCC

707. The decision of this Court in India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors. (1930) 1 SCC 12 (seven-judges Bench) and Orissa... Cement limited v. State of Orissa and Ors. (1991) Suppl. 1 SCC 430 (three- Judges Bench) were cited before the three-judges Bench in Goodricke. Both the decisions were distinguished and the constitutional validity of the 1989 amendments was upheld. The writ petitions were dismissed, It appears that a similar cess was levied by a pan materia provision enacted by the State Legislature of Orissa as the Orissa Rural Employment, Education and

Production Act, 1982, The cess was on land bearing coal and minerals. Challenge to the constitutional validity of such cess was successfully laid before this Court, and the Orissa Legislation was struck down as unconstitutional and ultra vires the competence of the State Legislature in State of Orissa. v. Mahanadi Coal Fields Limited (1995) Suppl.2 SCC 686 decided on April 21, 1995.

On 30.3.1996 a writ petition under Article 32 of the Constitution of India has been filed in this Court laying challenge to the constitutional validity of the very same amendments which were unsuccessfully impugned in the Goodricke's case.

The writ petitioners in the Tea Matters have in their petition stated a few grounds in support of the relief sought for. However, a perusal of the grounds reveals that in substance the challenges is only one, i.e., the decision in Goodricke runs counter to the view of the law taken by Seven- Judges Bench in. India Cement and three-Judges Bench in Orissa Cement; Goodricks was rightly not followed in Mahanadi Coal Fields; rather Mahanadi Coal Fields has whittled down the authority of Goodricke and that being the position of law the impugned cess is ultra vires the power of the State Legislature and deserves to be pronounced so. In short, the same challenge as was laid and turned down in Goodricke, is reiterated drawing support from the decisions of this Court previous and subsequent to and seeks the overruling of Goodricke.

(C) Brick-Earth Matters The Bengal Brickfield Owners' Association, being a representative body of the persons engaged in the activity of brick manufacturing and owning brickfields as also one of the brickfield owners, have joined in filing a writ petition before this Court wherein the constitutional validity of the very same provisions as contained in the Cess Act, 1880, the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976 (both as amended by the Bengal Taxation Laws Amendment Act, 1992) has been put in issue, as has been subjected to challenge by the coal mine owners and the tea estate owners disputing the levy of cess ailegediy on coal and tea. The grounds of challenge, briefly stated, are three in number: firstly, that brick-earth is a minor mineral to which the Mines and Minerals Development and Regulation Act, 1957, applies and by virtue of the declaration made by Section 2 of the Act by reference to Entry 54 in Schedule I of the Constitution, the field relating to such minor minerals is entirely covered by the Centra! Legislation and hence the State Legislations are not competent to levy the impugned cess; secondly, that the levy is on tha dispatch of minor minerals fee sale, while the process of manufacturing bricks does not involve any dispatch of the brick-earth inasmuch as the brick-earth is consumed then and there, on the brickfield itself, in the process of manufacturing of bricks, and there being no dispatch of brick-earth, the cess is not leviable; and thirdly, that the State Government is not empowered to levy any cess on either the extraction of brick-earth or on the dispatch of brick-earth. In support of these three grounds, it is further submitted that the same quantity of brick-earth is subjected by Central Legislation to payment of royalty which is a tax, and the same quantity of brick-earth is sought to be levied with cess which is incompetent so far as the State Legislature is concerned. The writ petition places reliance on the decisions of this Court in India Cement Ltd. and Ors. (supra), Orissa Cement Ltd. (supra) and Buxa Dooars Tea Company Ltd. and Ors. (supra). Some of the members of the petitioner association were served with demand notices. The relief sought for in the petition is striking down of the relevant provisions of the three State Legislations as ultra vires the Constitution and quashing of the demand notices. The reason for

filing the petition in this Court, as stated in the writ petition, is that the provisions sought to be impugned herein have already been declared ultra vires by the High Court of Calcutta in relation to 'tea', an appeal against which decision has been filed in this Court and by an interim order the operation of the judgment of the High Court was stayed.

According to the respondents, the cess sought to be levied by the impugned State Legislation is in the nature of fee and not tax. The purpose of levying fee, as stated in the Preamble to the relevant legislation, is rendering different services to the society and for public benefit. The cesses have been levied by the State Government for securing of welfare to the people by the State as is enshrined in Part IV of the Constitution of India by providing communication facilities, removal of illiteracy and rural employment to the poor living below the poverty line. The impugned legislations levying the cess, do not encroach upon the field covered by the Central legislation, The brick-kiln owners extract the brick-earth as an item of trade. From every 100 cft of brick-earth which weighs 5 metric tones, 1382 bricks are manufactured. The dispatch of 1382 bricks means the dispatch of 100 cft or 5 metric tones of brick-earth. A brickfield owner performs dual functions: firstly, he extracts a quantum of brick-earth from the quarry, and secondly, he dispatches the same for manufacture of bricks in the some quarry-field. The brickfield owner is an extractor of brick- earth and also a manufacturer of bricks. The element of dispatch is kept hidden. That is why the cess is now assessed on annual dispatches. Dispatch, in the context of brick-earth, means removal of brick-earth from one place to another which may be within the same complex and for domestic or captive use or consumption. In any case, the removal of brick-earth involved in the process cannot escape assessment.

(D) Minor Mineral Matters This batch of appeals puts in issue the judgment dated 1.3.2000 delivered by a Division Bench of the Allahabad High Court (reported as Ram Dhani Singh v. Collector, Sonbhadra and Ors. - AIR 2001 Allahabad 5), upholding the constitutional validity of a cess on mineral rights levied under Section 35 of the U.P. Special Area Development Authorities Act, 1986, read with Rule 3 of the Shakti Nagar Special Area Development Authority (Cess on Mineral Rights) Rules, 1997 (herein referred to briefly as "SADA Act' and 'SADA Cess Rules' respectively). There was a bunch of 73 writ petitions filed in the High Court which have all been dismissed. The challenge is being pursued in this Court by ten writ petitioners through these appeals by special leave.

The Governor of Uttar Pradesh promulgated U.P. Ordinance No. 15 of 1985, which was repealed by U.P. Special Area Development Authorities Act, 1986 (U.P. Act No. 9 of 1986), containing identical provisions as were contained in the preceding Ordinance. The said Act received the assent of the President of India on 19.3.1986 and was published in U.P. Gazette of that day. Section 35 of the Act provides as under :

"35. Cess on mineral rights.-

(1) Subject to any limitations imposed by Parliament by law relating to mineral development, the Authority may impose a cess on mineral rights at such rate as may be prescribed.

(2) Any Cess imposed under this section shall be subject to confirmation by the State Government and shall be leviable with effect from such data as may be appointed by the State Government in this behalf."

On 24.2.1997, in exercise of the power conferred by Section 35 of the Act, the Governor made the Shakti Nagar Special Area Development Authority (Cess on Mineral Rights) Rules, 1997, which were published on the same day in the U.P. Gazette and came into force. Rule 2(b) and Rule 3(1) and (2), relevant for our purpose, are extracted and reproduced hereunder : "2. In these rules, unless there is anything repugnant in the subject or context--

(a) xxx xxx xxx

(b) "Mineral Rights" means rights conferred on a lessee under a mining lease granted or renewed for mining operations in relation to Minerals (providing operation for raising, winning or extracting coal) as defined in the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957"

"3.(1) The Authority may, subject to Sub-rules (2) and (3) impose a cess on mineral rights on such minerals and minor minerals and at such rates are specified below :

MINERAL/MINOR MINERAL MINIMUM RATE MAXIMUM RATE (1) Cess on Coal Rs.5.00 (per ton) Rs.10.00 (per ton) (2) Cess on Stone, Coarse Sind/Sand Rs.2.00 (Per Cubic metre) Rs.5.00 (Per Cubic metre) (2) The rates shall not be less than the minimum rates or more than the maximum rates specified in Sub-rule (1) and shall be determined by the Authority by a special resolution which shall be subject to confirmation by the State Government."

In exercise of the power conferred by the Act and the Rules, the State Government proceeded to levy cess and take steps for recovery thereof by serving notices and issuing citations on the several stone crushers (which the appellants are), who extract stone as mineral and convert the same into metal by a process of crushing. They filed the writ petitions disputing the levy and the demand by the State Government.

On behalf of the writ-petitioners, the SADA Cess Rules as also the legislative competence of the State Legislature to enact Section 35 of the SADA Act were challenged on the ground that the MMDR Act, 1957, having been enacted containing a declaration under Section 2 as contemplated by Entry 54 of List-I and the Act being applicable to Sonbhadra failing within the State of U.P. as well, the State Legislature was denuded of its power to enact the impugned law and levy the impugned cess. It was also submitted that the impugned cess would have the effect of adding to the royalty already being paid and thereby increasing the same, which was ultra vires the power of the State Government as that power was exercisable only by the Central Government.

The High Court has held the SADA Act, the SADA Cess Rules and the levy of cess thereunder within the competence of State Legislature by reference to Entry 5 in List II.

Reference to Constitution Bench Since the appeals referable to coal matters and the writ petition referable to tea matters raised common issues, the cases were taken up for hearing together. On 12.10.1999, the conflict amongst several decisions of this Court was brought to the notice of the three-judges Bench hearing the matter which passed the following order :

"Great emphasis has been placed by learned counsel for the State of West Bengal upon the judgment of a Bench of three learned Judges in Goodricke Group Ltd. and Ors. v. State of West Bengal and Ors. [1995 Suppl. (1) SCC 707]. Quite apart from the fact that there are pending proceedings in this Court seeking to reconcile the judgment in Goodricke with that in State of Orissa and Ors. v. Mahanadi Coalfields Ltd. and Ors. [1995 Suppl.(2) SCC 686], we find some difficulty in accepting as correct the view taken by Goodricke, particularly having regard to the earlier decision (of a Bench of two learned Judges) in Buxa Dooars Tea Co. Ltd. v. State of West Bengal. We think, therefore, that these matters should be heard by a Constitution bench.

The papers and proceedings may, accordingly, be placed before the Hon'ble Chief Justice for appropriate directions."

The brick-earth matters were also clubbed with the abovesaid matters for hearing.

The impugned judgment of the High Court of Allahabad in Minor Mineral Matters has placed reliance on the decision of this Court in Goodricke Group Ltd. and Ors. v. State of West Bengal and Ors. - (1995) Supp. 1 SCC

707. The correctness of the said decision was in issue in Civil Appeal Nos. 1532-33 of 1993 and batch matters and hence these appeals were also directed to be placed before the Constitution Bench for hearing.

This is how the four sets of matters have been listed before and heard by the Constitution Bench.

Relevant Entries and principles of interpretation Before we proceed to examine the merits of the submissions and counter submissions made on behalf the parties, it will be useful to recapitulate and summarise a few principles relevant for interpreting entries classified and grouped into the three Lists of the Seventh Schedule of the Constitution. The law is legion on the point and the principles which are being briefly stated hereinafter are more than settled. These principles are referred to in the several decisions which we shall be referring to hereinafter. So far as the principles are concerned they have been followed invariably in all the decisions, however diverse results have followed based on facts of individual cases end manner of application of such principles to the facts of those cases.

The relevant entries to which reference would be required to be made during the course of this judgment are extracted and reproduced herein:-

"SEVENTH SCHEDULE (Article 246) List I - Union List

52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

96. Fees in respect of any of the matters in this List, but not including fees taken in any court.

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

<List II - State List

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

49. Taxes on lands and buildings.

50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

66. Fees in respect of any of the matter in this List, but not including fees taken in any court."

Article 245 of the Constitution is the fountain source of legislative power. It provides - subject to the provisions of this Constitution. Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make Saws for the whole or any part of the State. The legislative field between the Parliament and the Legislature of any State is divided by Article 246 of the Constitution. Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in Seventh Schedule, called the 'Union List'. Subject to the said power of the Parliament, the Legislature of any State has power to make laws with respect to any of the matters enumerated in List III, called the 'Concurrent List'. Subject to the abovesaid two, the Legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II, called the 'State List'. Under Article 248 the exclusive power of Parliament to make laws extends to any matter not enumerated in the Concurrent List or State List. The power of making any law imposing a tax not mentioned in the Concurrent List or Stats List vests in Parliament. This is what is called the residuary power vesting in Parliament. The principles have been succinctly summarized and restated by a Bench of three learned Judges of this Court on a review of the available decisions in Hoechst Pharmaceuticals Ltd. and Ors. v. State of Bihar and Ors., -. They are-

(1) the various entries in the three Lists are not 'powers' of legislation but 'fields' of legislation. The Constitution effects a complete separation of the taxing power of the Union and of the States under Article 246. There is no overlapping anywhere in the taxing power and the Constitution gives independent sources of taxation to the Union and the States. (2) In spite of the fields of legislation

having been demarcated, the question of repugnancy between law made by Parliament and a law made by the State Legislature may arise only in cases when both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and a direct conflict is seen. If there is a repugnancy due to overlapping found between List II on the one hand and List I and List III on the other, the Stats law will be ultra vires and shall have to give way to the Union law.

(3) Taxation is considered to be a distinct matter for purposes of legislative competence. There is a distinction made between general subjects of legislation and taxation. The general subjects of legislation are dealt with in one group of entries and power of taxation in a separate group. The power to tax cannot be deduced from a general legislative entry as an ancillary power.

(4) The entries in the List being merely topics or fields of legislation, they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The words and expressions employed in drafting the entries must be given the widest possible interpretation. This is because, to quote V. Ramaswami, J., the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere simplex enumeratio of broad categories. A power to legislate as to the principal matter specifically mentioned in the entry shall also include within its expanse the legislations touching incidental and ancillary matters.

(5) Where the legislative competence of a Legislature of any State is questioned on the ground that it encroaches upon the legislative competence of Parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in Lists I or III. If it does, no further question need be asked and Parliament's legislative competence must be upheld. Where there are three Lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other Legislature is of no consequence. The Court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of ascertaining the true character of legislation. The name given by the Legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded.

(6) The doctrine of occupied field applies only when there is a clash between the Union and the State Lists within an area common to both. There the doctrine of pith and substance is to be applied and if the impugned legislation substantially falls within the power expressly conferred upon the Legislature which enacted it, an incidental encroaching in the field assigned to another Legislature is to be ignored. While reading the three Lists, List I has priority over Lists III and II, and List III has priority over List II. However, still, the predominance of the Union List would not prevent the State Legislature from dealing with any matter with in List II though it may incidentally affect any item in List I.

(emphasis supplied) Tax Legislation The abovestated are general principles. Legislations in the field of taxation and economic activities need special consideration and are to be viewed with larger flexibility in approach. Observations of the Constitution Bench in R.K. Garg v. Union of India and

Ors., (1981) 4 SCC 676, are apposite, wherein this Court has emphasized a greater latitude - like play in the joints - being allowed to the Legislature because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula. In this field the Court should feel more inclined to give judicial deference to legislative judgment. Their Lordships quoted with approval the following statement of Frankfurter, J. in Morey v. Doud, (1957) 354 US 457:-

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after ail has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events, self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability".

Their Lordships further observed that the Courts ought to adopt a pragmatic approach in solving problems rather than measuring the propositions by abstract symmetry. The exact wisdom and nice adaptations of remedies may not be possible. Even crudities and inequities have to be accommodated in complicated tax and economic legislations.

We now proceed to enter a deeper dimension in the field of tax legislation by considering the problem of devising the measure of taxation. This aspect has been dealt with in detail in Union of India and Ors. v. Bombay Tyre International Ltd.,. Tracing the principles from the leading authority of Re.: a reference under the Government of Ireland Act 1920 and Section 3 of the Finance Act (Northern Ireland) 1934, (1936) A.C. 352, passing through Ralla Ram v. Province of East Punjab, 1948 FCR 207, and treading through the law as it has developed through judicial pronouncements one after the ether, this Court has made subtle observations therein. It has been long recognized that the measure employed for assessing a tax must not be confused with the nature of the tax. A tax has two elements: first, the person, thing or activity on which the tax is imposed, and secondly, the amount of tax. The amount may be measured in many ways; but a distinction between the subject matter of a tax and the standard by which the amount of tax is measured must not be lost sight of. These are described respectively as the subject of a tax and the measure of a tax. It is true that the standard adopted as a measure of the levy may be indicative of the nature of the tax, but it does not necessarily determine it. The nature of the mechanism by which the tax is to be assessed is not decisive of the essential characteristic of the particular tax charged, though it may throw light on the general character of the tax.

Here we may refer to certain illustrative cases of well settled authority - the authority which has not been shaken so far and has rather withstood the test of times.

Taxation - measure of levy not suggestive of nature of tax - illustrative cases In Ralla Ram (supra) the Federal Court held that a tax on buildings under Section 3 of the Punjab Urban Immovable Property Tax Act, 1940, measured by a percentage of the annual value of such building, remained a tax on buildings even though the measure of annual value of a building was also adopted as a standard for determining income from property under the Income Tax Act. The same standard was adopted as a measure for the two levies, yet the levies remained separate imposts by virtue of their

distinctive nature. The measure adopted, it was held could not be identified with the nature of the tax levied.

In Sainik Motors, Jodhpur v. State of Rajasthan, a tax on passengers and goods was assessed as a rate on the fares and freights payable by the owners of the motor vehicles. The contention that the levy was a tax upon income and not upon passengers and goods was repelled by this Court. The Court pointed out that though the measure of the tax is furnished by the fares and freights it does not cease to be a tax on passengers and goods.

In D.G. Gouse & Co. v. State of Kerala, the Court examined the different modes available to the Legislature for measuring the levy of tax on buildings. The Court upheld the provision made by the Legislature linking the levy with the annual value of the building and prescribing a uniformed formula for determining its capital value and for calculating the tax.

In the Hingir-Rampur Coal Co. Ltd. v. State of Orissa, the form in which the levy was imposed was held to be an impermissible test for defining in itself the character of the levy. It was argued that the method of determining the rate of levy was by reference to the minerals produced by the mines and, therefore, it was levy in the nature of a duty of excise. This Court held that the method thus adopted may be relevant in considering the character of the impost but its effect must be weighed alongwith and in the light of the other relevant circumstances. Referring to Bombay Tyre International Ltd. (supra), the Court further held that it is clear that when enacting a measure to serve as a standard for assessing the levy, the Legislature need not contour it along lines which spell out the character of the levy itself. A broader based standard of reference is permissible to be adopted for the purpose of determining the measure of the levy. Any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy. Meaning of 'Lands' - as used in Entry 49 in list II The word 'land' - as used in Entry 46, in List II, came up for the consideration of this Court in Anant Mills v. State of Gujarat. It was held that the word 'land' cannot be assigned a narrow meaning so as to confine it to the surface of the earth. It includes all strata above or below. In other words, the word 'land' includes not only the surface of the earth but everything under or over it, and has in its legal significance an indefinite extant upward and downward. The four-Judges' Bench upheld the validity of the law levying tax in respect of area occupied by underground lines by reference to Entry 49 in List II, holding it to be a tax on land only.

Ample authority is available for the concept that under Entry 49 in List II the land remains a land without regard to the use to which it is being subjected. It is open for the Legislature to ignore the nature of the user and tax the land. At the same time it is also permissible to identify, for the purpose of classification, the land by reference to its user. While taxing the land it is open for the Legislature to consider the land which produces a particular growth or is useful for a particular utility and to classify it separately and tax the same. Different pieces of land identically situated otherwise, but being subjected to different uses, or having different potential, are capable of being classified separately without incurring the wrath of Article 14 of the Constitution. The Constitution Bench in Kunnathat Thathunni Moopil Nair etc. v. State of Kerala and Anr., held that the land on which a forest stands is not to be excluded necessarily from Entry 49. The erstwhile Entry 19 of Schedule II applied to 'forest'. Their Lordships held that the use of the word 'forest' in Entry 19 could

not be pressed into service to cut down the plain meaning of the word 'land' in Entry 49. It was permissible to tax the land on which a forest stands by reference to Entry 49. In Ajoy Kumar Mukherjee v. Local Board of Barpeta, , the appellant, a land holder, held a hatt (or market) on his land. The Local Board asked the appellant to take out a licence and pay Rs. 600/-, later Rs. 700/-, by way of licence fee for holding the market. It was urged that the impost was unconstitutional, inter alia, on the ground that the tax was actually imposed on the market, which infringed Article 14 of the Constitution, and also because the State Legislature had no legislative competence to tax a market. The Local Board relied on Entry 49 in List. II. The appellant urged that Entries 45 to 63 which deal with taxes do not contemplate a tax on markets. Repelling the plea, the Constitution Bench held that the tax was on the land though the charges arise only when the land is used for a market. The tax remained a tax on land in spite of the imposition being dependant upon the user of the land as a market. The tax was an annual tax as contrasted to a tax for each day on which the market was held. The owner or occupier of the land was responsible far payment of tax on an annual basis. The amount of tax depended upon the area of the land on which the market was held and the importance of the market. Thus, the tax was held to be a tax on land, though the incidence depended upon the use of the land as a market.

In Vivian Joseph Ferreira and Anr. v. The Municipal Corporation of Greater Bombay and Ors.,the tax was confined to the residential tenanted buildings. The classification was held to be valid. In fine The Government of Andhra Pradesh and Anr. v. Hindustan Machine Tools Ltd., house tax was levied on the buildings. The new definition of 'house' included 'a factory'. However, the house tax was levied only on the building occupied by the factory and not on the machinery and furniture. The State Legislature claimed competence to do so under Entry 49, List II. The power to tax a building, exercisable without reference to the use to which the building is put, was held to be valid. In the opinion of the Court, it was irrelevant that the building was occupied by a factory which could not conduct its activities without the machinery and furniture.

Once it is held that the land or building is available to be taxed, it does not matter to what use the land is being subjected though the nature of the user may enable land of one particular user being classified separately from the land being subjected to another kind of user. The tax would remain a tax on land. It cannot be urged that what is being taxed is not the land but the nature of its user. So also it is permissible to adopt myriad forms and methods of valuation for the purpose of quantifying the tax.

In Ralla Ram v. The Province of East Punjabu -1948 FCR 207, the Federal Court made it clear that every effort should be made as far as possible to reconcile the seeming conflict between the provisions of the Provincial Legislation and the Federal Legislation. Unless the court forms an opinion that the extent of the alleged invasion by a Provincial Legislature into the field of the Federal Legislature is so great as would justify the view that in pith and substance the impugned tax is a tax within the domain of the Federal Legislature, the levy of tax would not be liable to be struck down. The test Said down in Sir Byramjee Jeejeebhoys's case (AIR 1940 Bom

65) by the Full Bench of Bombay High Court was approved.

In Assistant Commissioner of Urban Land Tax Madras and Ors. etc. v. Buckingham and Carnatic Co. Ltd. etc., for the purpose of attracting the applicability of Entry 49 in List II, so as to cover the impugned levy of tax on lands and buildings, the Constitution Bench laid down twin tests, namely, (i) that such tax is directly imposed on lands and buildings, and

(ii) that it bears a definite relation to it. Once these tests were satisfied, it was open for the State Legislature, for the purpose of levying tax, to adopt the annual value or the capital value of the lands and buildings for determining the incidence of tax. Merely, on account of such methodology having been adopted, the State Legislature cannot be accused of having encroached upon Entries 86, 87 or 83 of List I. Entry 86 In List I proceeds on the Principle of Aggregation and tax is imposed on the totality of the value of all the assets. It is quite permissible to separate lands and buildings for the purpose of taxation under Entry 49 in List II. There is no reason for restricting the amplitude of the language used in the Entry 49 in List II. The levy of tax, calculated at the rate of a certain per centum of the market value of the urban land was held to be intra vires the powers of the State Legislature and not trenching upon Entry 86 in List I. So is the view taken by another Constitution Bench in Shri Prithvi Cotton Mills Ltd., etc. v. Broach Borough Municipality and Ors., (1959) 2 SCC 283, where the submission that the levy was not a rate on lands and buildings as appropriately understood, but rather a tax on capital value was discarded.

R.R. Engineering Co., etc. v. Zila Parishad,_ Bareilly and Anr. etc. is a. case of circumstance and properties tax levied on the basis of income which the assessee receives from his profession, trade, calling or property. The plea that the tax was a tax on income was discarded. The test propounded by the Constitution Bench is that an excessive levy on circumstance may tend to blur the distinction between a tax on income and a tax on circumstances. Income will then cease to be a measure or yardstick of the tax and will become the very subject-matter of the tax. Restraint in this behalf is a prudent prescription for the local authorities to follow. The Constitution Bench observed that it was only a matter of convenience that income was adopted as a yardstick or measure for assessing the tax and the evolvement of such mechanism was not conclusive on the nature of tax.

We are inclined to make a reference to a few selected Full Bench decisions of different High Courts which have been cited with approval before this Court in many of the decisions to which we are making reference during the course of this judgment.

In Sir Byramjee Jeejeebhoy v. Province of Bombay and Ors. - A.I.R. 1940 Bombay 65 (F.B.) the Provincial Government levied a tax at the rate of 5% of the annual letting value in the City of Bombay on the buildings and lands. The buildings were classified by reference to their annual letting value, and exception from payment of tax was also carved out in favour of such buildings as remained vacant and unproductive of rent for the specified period. It was urged that the impugned tax purported or desired to tax the value. Placing reliance on the Federal Court's decision in "In Re: C.P. Motor Spirit Act, 1939 (1939 FCR 18) Chief Justice Beaumont held that the impugned tax was a tax on lands and buildings. Three submissions were made in support of the challenge: (I) that the tax is graded by reference to the annual value of the property charged, (II) that an allowance was available to be made in respect of vacant properties, and (III) that the basis of the tax was the same as the basis on which tax on income from property was imposed by Sections 6 and 9 of Income Tax

Act and, therefore in reality the rate was a tax on income. Beaumont, C.J. held that regard must be had to the pith and substance of the impugned tax arid not merely to the form. All the items in the Provincial List must be so construed as to exclude taxes on income. The tax is charged on lands and buildings and it is based on the estimated rent which the property would fetch. Such a value may bear very little relation to the actual income of the property. It is imposed without any relation to the capital value except insofar as such value can be ascertained by reference to the rateable value. It did not make any difference if the arbitrary basis which was adopted for the purpose of the rate might as well be applied for ascertaining the capital value as for ascertaining income. The fact that some concession is allowed to the small owner, a concession which may be based as much on political as on economic considerations and that an allowance may be made where the property is shown to produce no income, a fact which may be taken to show that the estimated value was found to be erroneous, cannot after the nature of the tax. The concept that in case of conflict between the Federal List and Provincial List, an entry in the Federal List may be given a more restricted meaning, was endorsed. The legality of the levy was upheld.

In District Board of Farrukhabad v. Prag Dutt and Ors. - AIR 1948 Allahabad 382 (F.B.), a tax on 'circumstances and property' was under challenge. It was urged that it was a tax on income. Chief Justice Malik held that the fundamental difference between the tax on 'income' and a tax on 'circumstances and property' is that income tax can only be levied if there is income and if there is no income, no tax is payable. But in the case of 'circumstances and property' tax, where a man's status has to be determined, his total business turnover may be considered for purposes of taxation, though he may not have earned any taxable income.

The State of Punjab v. The Union of India through the Secretary to Government Finance Department, Government of India, New Delhi - AIR 1971 Punjab & Haryana 155 (F.B.), is a Five-Judges Bench decision delivered by Chief Justice Harbans Singh. Conflict was noticed between List I, Entry 86 and List II, Entry 49. Dealing with the scope of Entry 49 in List II, it was held that it empowers the State Legislatures to directly tax lands and buildings, and for determining the basis of the tax the State Legislature may take, either the area, annual rental value, market value or the capital value of the land as a basis for calculating and quantifying the tax on land. Merely because tax was calculated on the basis of annual rental value, it will not turn it into a tax on income, and if it is based on capital value, it will not turn it into a tax on capital value.

Yet another angle which the Constitutional Courts would advisedly do better to keep in view while dealing with a tax legislation, in the light of the purported conflict between the powers of the Union and the State to legislate, which was stated forcefully and which was logically based on an analytical examination of constitutional scheme by Jeevan Reddy, J. in S.K. Bomai and Ors. v. Union of India, may be touched. Our Constitution has a federal structure. Several provisions of the Constitution unmistakably show that the Founding Fathers intended to create a strong centre. The historical background relevant at the time of the framing of the Constitution warranted a strong centre naturally and necessarily. This bias of the framers towards the centre is found reflected in the distribution of legislative heads between the Centre and the States. More important heads of legislation are placed in List I. In the Concurrent List the parliamentary enactment is given primacy, irrespective of the fact whether such enactment is earlier or later in point of time to a State

enactment on the same subject matter. The residuary power to legislate is with the Centre. By the Forty-second Amendment a few of the entries in List II were omitted or transferred to other lists. Articles 249 to 252 further demonstrate the primacy of Parliament, allowing it liberty to encroach on the field meant exclusively for the State legislation though subject to certain conditions being satisfied. In the matter of finances, the States appear to have been placed in a less favourable position. True, the Centre has been given more powers but the same is accompanied by certain additional responsibilities as well. The Constitution is an organic living document. Its outlook and expression as perceived and expressed by the interpreters of the Constitution must be dynamic and keep pace with the changing times. Though the basics and fundamentals of the Constitution remain unalterable, the interpretation of the flexible provisions of the Constitution can be accompanied by dynamism and lean, in case of conflict, in favour of the weaker or the one who is more needy. Several taxes are collected by the Centre and allocation of revenue is made to States from time to time. The Centre consuming the lion's share of revenue has attracted good amount of criticism at the hands of the States and financial experts. The interpretation of Entries can afford to strike a balance, or at least try to remove imbalance, so far as it can. Any conscious whittling down of the powers of the State can be guarded against by the Courts. "Let it be said that the federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle - the outcome of our own historical process and a recognition of the ground realities." Quoting from M.C. Setalvad, Tagore Law Lectures "Union and State relations under the Indian Constitution" (Eastern Law House, Calcutta, 1974), Jeevan Reddy, J. observed - "It is enough to note that our Constitution has certainly a bias towards the Centre vis-a-vis the States.....It is equally necessary to emphasise that Courts should be careful not to upset the delicately-crafted constitutional schema by a process of interpretation." The Conflict - a cautious evaluation of "India Cement"

We will now refer to and deal with those cases which have led to the three learned Judges of this Court, placing the matter for consideration by a Constitution Bench. We would refer to the cases mentioned in the order of reference and also to those cases which were heavily relied upon on behalf of the respondents, disputing the validity of the impugned tax. Immediately, we take up India Cement.

In India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors. what was impugned was a levy of cess on royalty and the question was, whether such cess on royalty is within the competence of the State Legislature. The appellant was required to pay, by the Madras Panchayats Act, 1958, local cess at the rate of 45 paise per rupee of the royalty already being paid. The question formulated by the Court, as arising for decision was : is cess on royalty a demand of land revenue or additional royalty? The Court found that the royalty was payable by the appellant as prescribed under the lease deed. The rates of the royalty were fixed under the Mines and Minerals (Development and Regulation) Act, 1957, which is a Central Act, passed under Entry 54 in List I, by which the control of mines and minerals has been taken over by the Central Government. The State Legislature sought to justify and sustain the levy by reference to Entry 49, 50 or 45 in List II, Cess is a tax and is generally used when the levy is for some special administrative expense, suggested by the name of the cess, such as health cess, education cess, road cess etc. This is a well-settled position of law. The levy was sought to be justified under Entry 45 in List II by including it within the meaning of land revenue, and in the alternative under Entry 49 in List II as tax on lands. The challenge to the constitutional validity of

the levy was upheld. We would briefly state the reasoning which prevailed with the learned Judges.

G.L. Oza, J. delivered a separate concurring opinion. The majority opinion expressed through Sabyasachi Mukharji, J. (as his Lordship then was), first clarified the distinction between 'royalty' and 'land revenue'. 'Land revenue' is connotative of the share in the produce of land which the king or the Government is entitled to receive. 'Royalty' is a charge payable on the extraction of minerals from the land. A cess on royalty cannot, therefore, be called additional land revenue and as such the State was disabled from imposing tax on royalty. There is a clear distinction between 'tax directly on land' and 'tax on income arising from land'. Royalty is indirectly connected with land and a cess on royalty cannot be called a tax directly on land as a unit. The levy could also not be sustained under Entry 50 in List II which deals with taxes on mineral rights subject to limitation imposed by Parliament relating to mineral development. Assuming that the tax in pith and substance fell to Entry 50 in List II, it would be controlled by a legislation under Entry 54 in List I.

A Division Bench decision of Mysore High Court in Laxminarayana Mining Co., Bangalore and Anr. v. Taluk Development Board and Anr. - AIR 1972 Mysore 299 was cited with approval in India Cement . The Mysore High Court struck down as violative of MMDR Act, 1957 a licence fee on mining manganese or iron ore etc. imposed by a State Legislation. A perusal of the judgment of the Mysore High Court shows that the impost was by way of licence fee on the mining of certain minerals. Regulation and development of mines and minerals was undertaken by the Central Legislation and therefore the power of the State Legislature under Entries 23 and 52 in List-II got denuded in the field of regulation and development covered by the Central Legislation. The Division Bench vide para 6 held "it is therefore clear that to the extent the Central Act makes provision regarding the regulation and development of minerals, the powers of the States Legislatures under Entry 23 of List 11 stand curtailed ". The State Government had sought to defend the licence fee on the ground that it was in the nature of a tax and not a licence fee. This plea has been specifically noted by the High Court and dealt with. However, what is significant to note is the revelation, made by careful reading of the Judgment, that provision for licence fee was made in the Central Legislation and licence fee was sought to be imposed by the State too. In fact, the licence fee was a step trenching upon the field of regulation and therefore was liable to be struck down on this ground alone. Yet, another reasoning which prevailed with the High Court was that Section 143 of the State Act, which was not inconsistent with the Central Act, was relied on by the State Government as conferring power on it to levy the impugned licence fee. On that plea the High Court formed an opinion that on the framing of Section 143 of the State Act it did not in express terms authorize a levy of fee or tax. The High Court observed - "It (Section 143) cannot also be construed as conferring such a power on the respondents to levy a tax or fee on mining, in view of the well-settled and statutory construction that a Court construing a provision of law must presume that the intention of the authority in making it was not to exceed its power but to enact it validly". The ratio of the decision of the Mysore High Court is that provision for licenses and license fees, operating in the field of regulation of mines and minerals is not available to be made by State legislation - in view of the declaration in terms of Entry 54 in List I.

In our view, the decision by Mysore High Court cannot be read so widely as laying down the law that Union's power to regulate and control results in depriving the States of their power to levy tax or fee

within their legislative competence without trenching upon the field of regulation and control. There is a distinction between power to regulate and control and power to tax, the two being distinct and that difference has not been kept in view by the Mysore High Court.

(A version from main issue) Royalty, if tax?

We Would like to avail this opportunity for pointing out an error, attributable either to a stenographer's devil or to sheer inadvertence, having crept into the majority judgment in India Cement Ltd.'s case (supra). The error is apparent and only needs a careful reading to detect. We feel constrained - rather duty-bound - to say so, lest a reading of the judgment containing such an error - just an error of one word - should continue to cause the likely embarrassment and have adverse effect on the subsequent judicial pronouncements which would follow India Cement Ltd.'s case, feeling bound and rightly, by the said judgment having the force of pronouncement by seven-Judges Bench. Para 34 of the report reads as under : "In the aforesaid view of the matter, we are of the opinion that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State legislature because Section 9 of the Central Act covers the field and the State legislature is denuded of its competence under Entry 23 of List II. In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II as being a tax on land. Royalty on mineral rights is not a tax on land but a payment for the user of land."

(underlining by us) In the first sentence the word 'royalty' occurring in the expression - 'royalty is a tax', is clearly an error. What the majority wished to say, and has in fact said, is - 'cess on royalty is a tax'. The correct words to be printed in the judgment should have been 'cess on royalty' in place of 'royalty' only. The words 'cess on' appear to have been inadvertently or erroneously omitted while typing the text of judgment. This is clear from reading the judgment in its entirety. Vide para 22 and 31, which precede para 34 above said, their Lordships have held that 'royalty' is not a tax. Even the last line of para 34 records 'royalty on mineral rights is not a tax on land but a payment for the user of land'. The very first sentence of the para records in quick succession '.....as such a cess on royalty being a tax on royalty, is beyond the competence of the State legislature...'. What their Lordships have intended to record is '.....that cess on royalty is a tax, and as such a cess on royalty being a tax on royalty is beyond the competence of the State Legislature....'. That makes correct and sensible reading, A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law, and the apparent error should be Ignored, far from making any capital out of it, giving way to the correct expression which ought to be Implied or necessarily read in the context, also having regard to what has been said a little before and a little after. No learned Judge would consciously author a judgment which is self-inconsistent or incorporates passages repugnant to each other. Vide para 22, their Lordships have clearly held that there is no entry in Schedule II which enables the State to impose a tax on royalty and, therefore, the State was incompetent to impose such a tax (cess). The cess which has an incidence of an additional charge on royalty and not a tax on land, cannot apparently be justified as failing under Entry 49 in List II.

It is of significance for the issue before us, to determine the nature of royalty and whether it is a tax, and if not, then, what it is, Until the pronouncement of this Court in India Cement (supra), it has

been the uniform and unanimous judicial opinion that royalty is not a tax.

First we will refer to certain dictionaries oft-cited in courts of law.

Words and Phrases, Permanent Edition (Vol.37A, page 597)- ""Royalty" is the share of the produce reserved to owner for permitting another to exploit and use property. The word "royalty" means compensation paid to landlord by occupier of land for species of occupation allowed by contract between them. "Royalty" is a share of the product or profit (as of a mine, forest, etc.) reserved by the owner for permitting another to use his property."

Stroud's Judicial Dictionary of Words and Phrases (Sixth Edition, 2000, Vol.3, page 2341) -

"the word "royalties" signifies, in mining leases, that part of the reddendum which is variable, and depends upon the quantity of minerals gotten or the agreed payment to a patentee on every article made according to the patent. Rights or privileges for which remuneration is payable in the form of a royalty"

Words and Phrases, Legally Defined (Third Edition, 1990, Vol.4, page 112) - "A royalty, in the sense in which the word is used in connection with mining leases, is a payment to the lessor proportionate to the amount of the demised mineral worked within a specified period"

Wharton's Law Lexicon (Fourteenth Edition, page 893) - "Royalty, payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised."

Mozley & Whiteley's Law Dictionary (Eleventh Edition, 1993, page 243) - "A pro rata payment to a grantor or lessor, on the working of the property leased, or otherwise on the profits of the grant of lease. The word is especially used in reference to mines/ patents and copyrights."

Prem's Judicial Dictionary (1992, Vol. 2, page 1458) - "royalties are payments which the Government may demand for the appropriation of minerals, timber or other property belonging to the Government. Two important features of royalty have to be noticed, they are, that the payment made for the privilege of removing the articles is in proportion to the quantity removed, and the basis of the payment is an agreement."

Black's Law Dictionary (Seventh Edition, p.1330) - "Royalty - A share of the product or profit from real property, reserved by the grantor of a mineral lease, in exchange for the lessee's right to mine or drill on the land.

Mineral Royalty : A right to a share of income from mineral production."' In D.K. Trivedi & Sons, and Ors. v. State of Gujarat and Ors., 1986 (Supp) SCC 20, a Bench of two learned Judges of this Court dealt with "rent", "royalty" and "dead rent" and held as follows. Rent is an integral part of the concept of a lease. It is the consideration from the lessee to the lessor for the demise of the property

to him. In a mining lease the consideration usually moving from the lessee to the lessor is the rent of the area leased (often called surface rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty". It may, however, be that the mine is not worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, regardless of whether the mine is worked or not, a fixed amount is provided to be paid to him by the lesses. This is called "dead rent". "Dead rent" is calculated on the basis of the area leased while "royalty" is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed. Since dead rent and royalty are both a return to the lessor in respect of the area leased, looked at from one point of view dead rent can be described as the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased, and not on the quantity of minerals extracted or removed. In H.R.S. Murthy v. Collector of Chittor, too the Constitution Bench of this Court had defined Royalty to mean 'the payment made for the materials or minerals won from the land'.

The judicial opinion as prevailing amongst the High Courts may be noticed. A Full Bench of the High Court of Orissa held in Laxmi Narayan Agarwalla and Ors. v. State of Orissa and Ors., 'Royalty is the payment made for the minerals extracted; it is not tax'. In Surajdin Laxmanlal v. State of M.P., Nagpur and Ors. a Division Bench of the High Court of Madhya Pradesh referred to the Wharton's Law Lexicon and Mozley & Whiteley's Law Dictionary and said - "royalties are payments which the Government may demand for the appropriation of minerals, timber or other property belonging to the Government." The High Court opined that there are two important features of royalty: (i) the payment is in proportion to the quantity removed; and (ii) the basis of the payment is an agreement.

Drawing a distinction between 'royalty' and 'tax', a Division Bench of the High Court of Punjab and Haryana High Court held in Dr. Shanti Saroop Sharma and Anr. v. State of Punjab and Ors. as under -

"if a person is merely in occupation of land which contains minor minerals, he is not liable to pay any royalty, but it is only when he holds a mining lease and by virtue of that extracts one or more minor minerals that he is called upon to pay royalty to the Government where the lease is in respect of the land in which minor minerals vest inthe Government. Royalty thus has its basis in the contract. For payment to the owner of the minerals for the privilege of extracting the minor minerals computed on the basis of the quantity actually extracted and removed from the leased area. It is more akin to rent or compensation payable to an owner by the occupier or lessee of land for its use or exploitation of the resources contained therein. Merely because the provision with regard to royalty is made by virtue of the rules relating to the regulation of the mining leases and a uniform rate is prescribed, it does not follow that it is a compulsory exaction in the nature of tax or impost."

A Division Bench of Gujarat High Court in Saurashtra Cement & Chemical Industries Ltd., Ranavav v. Union of India and Anr., emphatically said - "royalty may not be a fee but it is not a tax. It is a

payment for the mineral which is removed or consumed by the holder of the mining lease. The minerals themselves, - the property beneath the soil - belong to the Union. When the holder of a mining lease removes these minerals or consumes them, he can do so only on payment of its price or value. Therefore, royalty is a share which the Union claims in the minerals which have been won from the soil by the lessee and which otherwise belong to it. Royalty is a share in such minerals and not a tax in the form of a compulsory exaction. It is not compulsory because anyone who applies for a mining lease to win minerals for being removed or consumed must pay its price. If he does not want to pay the price, he may not apply for a mining lease. Royalty which is a share of the owner of the minerals - the Union - won by the lessee from the soil with the authority of the Union can never be said to be an imposition on the holder of a mining lease.

We need not further multiply the authorities. Suffice it to say that until the pronouncement in India Cement, nobody doubted the correctness of 'royalty' not being a tax.

Such has been the position even subsequent to the pronouncement in India Cement.

In Inderjeet Singh Sial and Anr. v. Karam Chand Thapar and Ors., a Bench of two learned judges held that -

"In its primary and natural sense 'royalty', in the legal world, is known as the equivalent or translation of jura regalia or jura regia. Royal rights and prerogatives of a sovereign are covered thereunder. In its secondary sense the word 'royalty' would signify, as in mining leases, that part of the reddendum, variable though, payable in cash or kind, for rights and privileges obtained. It is found in the clause of the deed by which the grantor reserves something to himself out of that which he grants. It may even be a clause reserving rent in a lease, whereby the lessor reserves something for himself out of that which he grants."

In Ajit Singh v. Union of India and Ors. - 1995 supp. (4) SCC 224, another Bench of two learned Judges held that the grant of mining lease involves grant of a privilege by the State. In both these decisions India Cement's is not noticed.

In Quarry Owners' Association v. State of Bihar and Ors. - (2000) 8 SCC 655, a Bench of two learned Judges was faced with a submission, based on India Cement and subsequent decisions following it, that royalty is a tax. The learned Judges found it difficult to accept the concept but tried to wriggle out of the situation by observing -

"royalty includes the price for the consideration of parting with the right and privilege of the owner, namely, the State Government who owns the mineral. In other words, the royalty/dead rent, which a lessee or licensee pays, includes the price of the minerals which are the property of the State; Both royalty and dead rent are integral parts of a lease. Thus, it does not constitute usual tax as commonly understood but includes return for the consideration for parting with its property."

In India Cement (vide para 31, SCC) decisions of four High Courts holding 'Royalty is not tax' have been noted without any adverse comment. Rather, the view seems to have been noted with tacit

approval. Earlier (vide para 21, SCC) the connotative meaning of royalty being 'share in the produce of land' has been noted. But for the first sentence (in para 34, SCC) which we find to be an apparent error, no where else has the majority judgment held royalty to be a tax.

How the abovenoted inadvertent error in India Cement has resulted into throwing on the loop line the movement of later case law on this point may be noticed. In State of M.P. v. Mahalaxmi Fabric Mills Ltd., and Ors. (decision by a Bench of three learned Judges) and Saurashtra Cement and Chemicals Industries and Anr. etc. etc. v. Union of India and Ors. - (2001) 1 SCC 91 (decision by a Bench of two learned Judges) para 34 (from SCC) in India Cement has been quoted verbatim and dealt with. In Mahalaxmi Fabric Mills Ltd. and Ors.'s case (supra), the court noticed several dictionaries defining royalty and also the decisions of High Courts available and stated that traditionally speaking royalty is an amount which is paid under contract of lease by the lessee to the lessor, namely, the State Governments concerned and it is commensurate with the quality of minerals extracted. But then (vide para 12), the Court felt bound by the view taken in India Cement , reiterated in Orissa Cement, to hold that royalty is a tax. The point that there was apparently a 'typographical error' in para 34 in India Cement was specifically raised but was rejected. In Saurashtra Cement and Chemicals Industries and Anr. (supra) too the Court fait itself bound by the decision in Mahalaxmi Fabric Mills Ltd. and Ors. (supra), backed by India Cement, and therefore held royalty to be tax.

We have clearly pointed out the said error, as we are fully convinced in that regard and feel ourselves obliged constitutionally, legally and morally to do so, lest the said error should cause any further harm to the trend of jurisprudential thought centering around the meaning of 'royalty'. We hold that royalty is not tax. Royalty is paid to the owner of land who may be a private person and may not necessarily be State. A private person owning the land is entitled to charge royalty but not tax. The lessor receives royalty as his income and for the lessee the royalty paid is an expenditure incurred. Royalty cannot be tax. We declare that even in India Cement it was not the finding of the Court that royalty is a tax. A statement caused by an apparent typographical or inadvertent error in a judgment of the Court should not be misunderstood as declaration of such law by the Court. We also record, our express dissent with that part of the judgment in Mahalaxmi Fabric Mills Ltd. and Ors. which says (vide para 12 of SSC report) that there was no 'typographical error' in India Cement and that the said conclusion that royalty is a tax logically flew from the earlier paragraphs of the judgment.

Inter-relationship of Schedule I Entry 54 and Schedule II Entry 23 With the abovesaid reflection of ours on clarifying India Cement, clarification now we proceed to examine the inter-relationship of Schedule I Entry 54 and Schedule II Entry 23 which have been quoted and reproduced in the earlier part of this judgment.

Conflict in Entries (in the three Lists in Seventh Scheduled The analysis of decided cases as made by eminent constitutional jurist H.M. Seervai in his work on Constitutional Law of India (Fourth/Silver Jubilee Edition, Vol.3) is apposite. Vide para 22.168, he states - "In Gov.-Gen. in Council v. Madras, 1945 FCR 179, the Privy Council laid down important principles for interpreting apparently conflicting legislative entries in general, and apparently conflicting tax entries in particular. The

Privy Council held, first, that though a tax in List I (e.g. a duty of excise) and a tax in List II (e.g. a tax on the sale of goods) of the Government of India Act, 1935, may overlap, in fact there would be no overlapping in few, if the taxes were separate and distinct imposts; secondly, that the machinery of tax collection did not affect the real nature of a tax. Another principle for reconciling apparently conflicting tax entries follows from the fact that a tax has two elements : the parson, thing or activity on which the tax is imposed, and the amount of the tax. The amount may be measured in many ways; but decided cases establish a clear distinction between the subject matter of a tax and the standard by which the amount of tax is measured. These two elements are described as the subject or a tax and the measure of a tax. In D.G. Gouse v. Kerala -, which is considered later, the above passage was quoted with approval by the Supreme Court as stating precisely the two elements involved in almost all tax cases, namely, the subject of a tax and the measure of a tax."

It is necessary to examine the scheme underlying the Seventh Schedule of the Constitution. We are relieved of the need of embarking upon any maiden voyage in this direction in view of the availability of a Constitution Bench decision in M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh and Anr., (1958) SCR 1422. Venkatarama Aiyar, 3., speaking for the Constitution Bench, traced the history of legislations preceding the Constitution, analysed the scheme underlying the division of legislative powers between the Centre and the States and then succinctly summed up the quintessence of the analysis. It was held, inter alia:

1. In List I, Entries 1 to 81 mention the several matters over which Parliament has authority to legislate. Entries 82 to 92 enumerate the taxes which could be imposed by a law of Parliament. An examination of these two groups of Entries shows that while the main subject of legislation figures in the first group; a tax in relation thereto is separately mentioned in the second.

2. In List II, Entries 1 to 44 form one group mentioning the subjects on which the States could legislate. Entries 45 to 63 in that List form another group, and they deal with taxes.

3. Taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence. And this distinction is also manifest in the language of Article 248, Clauses (1) and (2) and of Entry 97 in List I of the Constitution. Under the scheme of the Entries in the Lists, taxation is regarded as a distinct matter and is separately set out .

4. The entries in the Legislative Lists must be construed broadly and not narrowly or in a pedantic manner,

5. The entries in the two Lists - List I and II - must be construed, if possible, so as to avoid conflict. Faced with a suggested conflict between entries in List I and List II, what has first to be decided is whether there is any conflict. If there is none, the question of application of the non-obstante clause 'subject to' does not arise. And, if there be conflict, the correct approach to the question is to see whether it was possible to effect a reconciliation between the two Entries so as to avoid a conflict and overlapping.

Illustration If it is possible to construe Entry 42 in List I as not Including tax on inter-state sales it should be so construed and the power to levy such tax must be held to be included in Entry 54 in List II (Entries as they existed pre-Forty Second Amendment, 1976) (See: Governor General in Council v. Province of Madras - AIR 1945 PC 98, and Province of Madras v. Bodder Paidenna & Sons - AIR 1942 FC 33)

6. In the event of a dispute arising it should be determined by applying the doctrine of pith and substance to find out whether between two Entries assigned to two different legislatures the particular subject of the legislation falls within the ambit of the one or the other. Where there is a clear and irreconcilable conflict of jurisdiction between the Centre and a provincial legislature it is the law of the Centre that must prevail. [underlining by us] Referring to M.P.V. Sundararamier & Co. (supra) Sabyasachi Mukharji, J. (as his Lordship then was) speaking for six out of the seven Judges constituting the Bench in Synthetics and Chemicals Ltd. and Ors. v. State of U.P. and Ors. held that under the constitutional scheme of division of powers in the Seventh Schedule, there are separate entries pertaining to taxation and other laws. A tax cannot be levied under a general entry.

The abovesaid principles continue to hold the field and have been followed in cases after cases.

General power of 'Regulation and Control' does not include power of taxation One thing, which too is well settled by a series of decisions is that the power of "regulation and control" is separate and distinct from the power of taxation. How this principle has been applied in myriad situations may be illustratively noticed.

The Constitution Bench in The Hingir-Rampur Coal Co. Ltd. and Ors. v. The State of Orissa and Ors. etc., was faced with a challenge to the constitutional validity of the Orissa Mining Areas Development Fund Act, 1952. The petitioner-company was engaged in producing and selling coal excavated from its collieries at Rampur in the State of Orissa. The Act and the Rules framed and the notification issued thereunder levied the payment of cess on the petitioner's Rampur Colliery. The cause of action had arisen to the petitioner therein on account of the communications made to the company in March 1959 ceiling upon them to file monthly returns for the assessment of the cess which was levied by issuance of a notification dated June 24, 1958.

The challenge to the constitutional validity of the levy imposed by the impugned Act came to be examined by reference to Entry 54 in List I read with the Mines and Minerals (Regulation and Development) Act, 1948 (Act No. 53 of 1948) as also by reference to Entry 52 in List I read with the Industries (Development and Regulation) Act, 1951 (Act No. 65 of 1951). On behalf of the State of Orissa, the levy was defended as a fee relatable to Entries 23 and 66 in List II. The Constitution Bench entered into an enquiry as to what is the primary object of the levy and the essential purpose which it is intended to achieve. It was observed that its primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences, as that is the true test in determining the character of the levy. The submission that the impugned levy could be either duty of excise or tax, was dismissed. The Constitution Bench held that the form in which the levy is imposed and the extent of the levy, i.e., being too high, do not alter the character of the levy from a fee into that of a duty of excise. The Constitution Bench laid down the features which would

distinguish excise from a tax or fee and also the features which distinguish a tax from a fee though there is no generic difference in a tax and a fee, both being compulsory exactions of money by public authorities.

The scheme of the impugned Orissa Act was examined in-depth and their Lordships found that the cess levied by the impugned Act was a fee. The Act was passed for the purpose of the development of mining areas in the State. Orissa is a poor State carrying in its womb a lot of mineral wealth of great potential value, but the areas where its mineral wealth is located lack infrastructure which would enable the exploitation of minerals. The primary and the principal object of the Act was to develop the mineral areas in the State and to assist more efficient and extended exploitation of its mineral wealth. The cess levied did not become a part of the consolidated fund and was not subject to an appropriation in that behalf ; it went into the special fund earmarked for carrying out the purpose of the Act and thus its existence established a correlation between the cess and the purpose for which it was levied, satisfying the element of quid pro quo in the scheme. The scheme of the Act showed that the cess was levied against the class of persons owning mines in the notified area and to enable the State Government to render specific services to the said class by developing the notified mineral area. Its application was regulated by a statute and was confined to its purposes. There was a definite correlation between the impost and the purpose of the Act which was to render services to the notified area. These feature of the Act impressed upon the levy the character of a fee as distinct from a tax.

The inter-relationship of Entries 23 and 66 in List II qua Entry 54 in List I was so stated by the Constitution Bench:-

"The effect of reading the two Entries together is clear. The jurisdiction, of the State Legislature under Entry 23 is subject to the limitation imposed by the latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if the said declaration covers the field occupied by the impugned Act the impugned Act would be ultra vires, not because of any repugnance between the two statutes but because the State Legislature had no jurisdiction to pass the law. The limitation imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself."

The Constitution Bench then proceeded to test the validity of the cess by reference to two Central Acts, namely (A) the Mines and Minerals (Regulation and Development) Act, 1948 (Act No. 53 of 1948) and (B) The Industries (Development and Regulation) Act, 1951 (Act No. 65 of 1951). (A) Act No. 53 of 1948 is a pre-constitutional piece of Central legislation. It was found that the applicability of the Act which was initially attracted to mines as well as oil fields remained confined to oil fields in view of the subsequent parliamentary enactment, i.e., the MMDR Act, 1957 (Act No. 67 of 1957). Therefore, the question which remained to be examined was only for the year 1952 as at that time the Act No. 53 of 1948 applied to mines as well as oil fields. The factual constitutional position was that Act No. 53 of 1948 ceased to apply to Orissa post- constitution and assuming it applied yet there

was no such declaration post-constitution made by Parliament as is referred to in Entry 23 in List II read with Entry 54 in List I and therefore in either case the validity of the said State Legislation was not impaired in spite of the finding recorded by the Court that 'there can be no doubt that the field covered by the impugned (State) Act is covered by the Central Act 53 of 1948'.

(B) What is significant for our purpose is the law laid down by the Constitution Bench as to the validity of the impugned State legislation by reference to Act No. 65 of 1951, Section 2 whereof contained a declaration

- "it is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule" as contemplated by Entry 52 in List I to which Entry 23 in List II is subject. The first schedule included coal as an article as to which the industry engaged in the manufacture or production was brought within the purview of the Act. Section 9 empowered the Central Government to levy cess for the purpose of the Act on all goods manufactured or produced in any scheduled industries including coal. The Constitution Bench held that the Central Act was passed to provide for the development and regulation of certain industries one of which undoubtedly is coal mining industry. The declaration made by Section 2 of the Act covered the same field as is covered by the impugned State Act.. Then the Constitution Bench held :-

".....but in dealing with this question it is important to bear in mind the doctrine of pith and substance. We have already noticed that in pith and substance the Impugned Act is concerned with the development of the mining areas notified under it. The Central Act, on the other hand, deals more directly with the control of all industries including of course the industry of coal. Chapter II of this Act provides for the constitution of the Central Advisory Council and Development Councils, Chapter III deals with the regulation of scheduled industries, Chapter IIIA provides for the direct management or control of industrial undertakings by Central Government in certain cases, and Chapter IIIB is concerned with the topic of control of supply, distribution, price, etc. of certain articles. The last chapter deals with miscellaneous incidental matters. The functions of the Development Councils constituted under this Act prescribed by Section 6(4) bring out the real purpose and object of the Act. It is to increase the efficiency or productivity in the scheduled industry or group of scheduled industries, to improve or develop the service that such Industry or group of industries renders or could render to the community, or to enable such industry or group of Industries to render such service more economically. Section 9 authorises the imposition of cess on scheduled industries in certain cases. Section 9(4) provides that the Central Government may hand over the proceeds of the cess to the Development Council there specified and that the Development Council shall utilize the said proceeds to achieve the objects mentioned in Clauses (a) to (d). These objects include the promotion of scientific and industrial research, of improvements in design and quality, and the provision for the training of technicians and labour in such industry or group of industries. It would thus be seen that the object of the Act is to regulate the scheduled industries with a view to improvement and development of the service that they may render to the society, and thus assist the solution of the larger problem of national economy. It is difficult to hold that the field covered by the declaration made by Section 2 of this Act, considered in the light of its several provisions, is the same as the field covered by the impugned Act. That being so, it cannot be said that as a result of Entry 52 read with Act LXL of 1951 the vires of the impugned Act can be

successfully challenged.

Our conclusion, therefore, is that the impugned Act is relatable to Entries 23 and 66 in List II of the Seventh Schedule, and its validity is not impaired or affected by Entries 52 and 54 in List I read with the Act LXV of 1951 and Act LIII of 1948 respectively. In view of this conclusion it is unnecessary to consider whether the impugned Act can be justified under Entry 50 in List II, or whether it is relatable to Entry 24 in List III and as such suffers from the vice of repugnancy with the Central Act XXXII of 1947."

[Underlining by us] In spite of having held that the Central Act of 1951 was attracted to coal industries, their Lordships, by applying the doctrine of pith and substance, refused to annul the levy of cess under the impugned Orissa Act based on the following distinction :-

Central- Act, 1951. State Legislation of 1952 Deals more directly with the control of all industries including the industry of coal with a view to improvement and development of the service that they may render to the society and thus assist the solution of the larger problem of national economy. Is concerned with the development of the mining areas notified under it.

Though both were cesses, one levied by the Central Act and the other levied by the State Act, inasmuch as they had different fields to operate, Entries 52 and 54 in List I were held not to have any adverse or denuding effect on the legislative competence of the State referable to Entries 23 and 65 in List II.

As a result, the writ petitions laying challenge to the constitutional validity of Orissa Act of 1952 were directed to be dismissed.

The distinction: Here we will pause for a moment with a view to highlight a feature of singular significance in The Hingir-Rampur Coal Co. as it would be the decisive factor for the applicability of the ratio of the case -- where it would apply and where it would not. Section 6 of Act No. 43 of 1948 which came up for the consideration of the Constitution Bench, specifically provides :-

"6. Power to make rules as respects minerals development (i) The Central Government may, by notification in the official Gazette, make rules for the conservation and development of minerals. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

xxx xxx xxx xxx

(i) the levy and collection of royalties, fees or taxes inrespect of minerals mined, quarried, excavated or collected; XXX XXX XXX XXX

10. Rules to be laid before the Legislature--All rules made under any of the provisions of this Act shall be laid before the Central Legislature as soon as may be after they are made."

Thus, the power to levy and collect fees or taxes in respect of minerals mined, quarried, excavated or collected was expressly conferred on the Central Government by a specific provision made in that regard by the Act itself. Because the power to levy tax or fee was appropriated to itself by a Central Legislation it was held that the impugned Orissa Act - a State Legislation, could not have provided for the levy of a fee as by virtue of the Central Legislation, the Union having exercised its power to legislate, the field was covered and exempted from the legislative competence of the State. Yet the recovery was field not liable to be annulled inasmuch as the Central Act No. 53 of 1948 was a pre-Constitution Legislation and as to which a declaration in terms of Entry 54 in List I was not made by the Parliament after the coming into force of the Constitution.

As to the Central Act of 1951, though it contained a declaration as contemplated by Entry 52 of List I, and though it applied to several goods including coal, the doctrine of pith and substance when correctly applied showed that the Central Act was intended for improvement of service while the State Act of 1952 was intended to deal with development of mining areas and the latter was valid.

The MMDR Act, 1957, which we are called upon to deal with, stands on much better footing for the writ petitioners herein as it does not contain any provision similar to Sections 6 and 10 of the Central Act No. 53 of 1948 or Section 9 of the Central Act No. 65 of 1951.

Challenge to levy under the abovesaid Orissa Act 27 of 1952 did not come to an end with Hinger-Rampur Coal Co., It was once again raised in the High Court with success and the State of Orissa came up In appeal which was heard and decided by a Constitution Bench In State of Orissa and Anr. v. M.A. Tulloch and Co. The respondent writ-petitioner was working a manganese mine in the State of Orissa under a lease granted under the provisions of the MMRD Act, 1948. The fee levied under the Orissa Act for the period of six quarters from September 30, 1956, to March 31, 1958, was under challenge. The MMDR Act 1957 came into force w.e.f. June 1/1958. The recovery impugned, therefore, related to the period pre-MMDR Act 1957 i.e. for the period during which Industries (Development and Regulation) Act 1951 was applicable. The recovery was sought to be effected after the enactment and corning into force of the Act No. 67 of 1957, though the recovery was referable to the period prior to it. It was held that the demand was liable to be raised for the period for which it was raised and the validity of the demand was an issue concluded by Hingir-Rampur Coal Co. The demand having validly accrued prior to June 1, 1958, the recovery thereof could be validly enforced, notwithstanding the repeal of Act No. 65 of 1951, on the general principles of interpretation of statutes as also under Section 6 of the General Clauses Act. Reiterating the findings in Hingir-Rampur Coal Co. the Constitution Bench held that the impugned Act empowered the State Government to levy a fee on a percentage of the value of the mined ore at the pit's mouth, the collections being intended for the development of the "mining areas" in the State, This finding is very significant.

The Constitution Bench laid down the following principles which are relevant for our purpose :-

(1) Entry 23 of the State List vests in the State Legislature power to enact laws on the subject of 'regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union'. It would be seen that "subject to" the

provisions of List I the power of the State to enact Legislation on the topic of "mines and mineral development" is plenary. The relevant provision in List I is, as already noticed, Entry 54 of the Union List. (2)To the extent to which the Union Government had taken under its control the regulation and development of minerals that much (i.e. to that extent) was withdrawn from the, ambit of the power of the State Legislature under Entry 23 and legislation of the State which had rested on ' the existence of power under that entry would, to the extent of that control, be superseded or rendered ineffective, for hare we have a case not of mere repugnancy between the provisions of the two enactments but of a denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make, and has made.

(3) The States would lose legislative competence only to the "extent to which regulation and development under the control of the Union has been declared by Parliament to be expedient In the public interest". (4) It would be logical first to examine and analyse the State Act and determine its purpose, width and scope and the area of Its operation and then consider to what "extent" the Central Act cuts into it or trenches on it.

As to the MMDR Act, 1957, the Constitution Bench In M.A. Tulloch observed by reference to Section 18 of the Act that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed there was no inconsistency and no supersession of the State Act.

The following holding of the above Constitution Bench is again worth noting :

".....that technically speaking the power to levy a fee is under the entries in the three lists treated as a subject-matter of an independent grant of legislative power, but whether it is an incidental power related to a legislative head or an Independent legislative power it is beyond dispute that in order that a fee may validity be Imposed the subject-matter or the main head of legislation in connection with which the fee is imposed is within legislative power. The material words of the Entries are : "Tees in respect of any of the matters in this List". It is, therefore, a prerequisite for the valid imposition of a fee that it is in respect of "a matter in the List". If by reason of the declaration by Parliament the entire subject-matter of "conservation and development of minerals" has been taken over, for being dealt with by Parliament, thus depriving the State of the power which it therefore possessed, it would follow that the "matter" In the State List is, to the extent of the declaration, subtracted from the scope and ambit of Entry 23 of the State List. There would, therefore, after the Central Act of 1957, be "no matter in the List" to which the fee could be related in order to render it valid."

In the last but one para of M.A. Tulloch this sentence occurs:- "If this were the true position about the effect of the Central Act 67 of 1957 as the liability to pay the fee which was the subject of the notices of the demand had accrued prior to June 1, 1958, it would follow that these notices were valid and the amounts due thereunder could be recovered notwithstanding the disappearance of the Orissa Act by virtue of the superior legislation by the Union Parliament". This observation, read out of the context and facts of the case alongwith the Court having referred to Sections 18 and 25 of the MMDR Act 1957, creates an impression that the power to levy fee having been appropriated by the

Central Legislation to the Central Government, the cess levied by the State would stand obliterated or repealed, is the holding by the Court. But that is not the ratio of the case and It could not have been because in Hingir-Rampur Coal Co. the Constitution Bench has clearly held to the contrary and the Constitution Bench in M.A. Tulloch has squarely followed the holding in Hingir-Rampur Coal Co. Nobody should act on an assumption that in M.A. Tulloch the Constitution Bench has held - much less as a ratio of the decision - that under Act No. 67 of 1957 the Central Government has appropriated to itself the power to levy tax or cess on minerals or mineral bearing land. All that the Court has said is that the 1957 enactment covers the field of legislation as to the regulation of mines and the development of minerals. As Section 2 itself provides and indicates, the assumption of control in public interest by the Central Government is on (i) the regulation of mines, (ii) the development of minerals, and (iii) to the extent hereinafter provided. The scope and extent of declaration cannot and could not have been enlarged by the Court nor has it been done. The effect is that no State Legislature shall have power to enact any legislation touching (i) the regulation of mines, (ii) the development of minerals, and

(iii) to the extent provided by Act No. 67 of 1957. The Preamble to the Central Act 67 of 1957 itself speaks -- "An Act to provide for the development and regulation of mines and minerals under the control of the Union". Tax and fee is not a subject dealt with by Act No. 67 of 1957. Let us demonstrate the same from the provisions of the Act and for that purpose relevant part of Section 13, Sub-section (1) and relevant part of Sub- section (2) of Section 18, Sub-section (3) of Section 18 and Section 25 are extracted and reprodused as under:

"13. Power of Central Government to make rules in respect of minerals. - (1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of reconnaissance permits, prospecting licences and mining leases in respect of minerals and for purposes connected therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely.

(a) to (h) *** ***

(i) the fixing and collection of fees for reconnaissance permits, prospecting licences or mining leases, surface rent, security deposit, fines, other fees or charges and the time within which and the manner in which the dead rent or royalty shall be payable;

18. Mineral development. - (1) It shall be the duty of the Central Government to take ail such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for such purposes the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit, (2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for ail or any of the following matters, namely:

(a) to (o) - (Not reproduced)

(p) the procedure for and the manner of imposition of fines for the contravention of any of the rules framed under this section and the authority who may impose such fines; and

(q) the authority to which, the period within which, the form and the manner in which applications for revision of any order passed by any authority under this Act and the rules made thereunder may be made, the fee to be paid and the documents which should accompany such applications. (3) All rules made under this section shall be binding on the Government.

25. Recovery of certain sums as arrears of land revenue. - Any rent, royalty, tax, fee or other sum due to the Government under this Act or the rules made thereunder or under the terms and conditions of any reconnaissance permit, prospecting licence or mining lease may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as an arrear of land revenue.

We have three comments to offer on M.A. Tulloch. Firstly , the provisions of the Act No. 67 of 1957 did not directly come up for the scrutiny of the Constitution Bench as there was no demand raised after the commencement of this Act which was put in issue before the Constitution Bench; the Constitution Bench was only adjudicating upon the issue whether a liability to pay cess incurred under the previous Act could be enforced under Act No. 67 of 1957 or in other words if Act No. 67 of 1957 had any castigating effect on the demand validly raised under the previous enactment. Secondly, the extent to which power to legislate by the States was excluded by the Central Act No. 65 of 1951 was not a question dealt with in-depth as it was done in Hingir-Rampur Coal Co. Thirdly, M.A. Tulloch, if not correctly read, creates a wrong impression that Act No,67 of 1957 provides for levy of tax and fee, which in fact It does not.

Section 13(2)(i) cannot be read as empowering the Central Government to levy any tax or fee. The expression "other fees and charges" have to be interpreted ejusdem generis taking colour from other words and phrases employed in the same clause. The word "charges" cannot and does include within its meaning any tax, The expression "other fees or charges" must be assigned such meaning as to include therein only such fees and charges as are meant for regulation or development.

We are clear in our minds that a power to levy tax or fee cannot be spelled out from sections 13, 18 and 25 of the Act No.67 of 1957. It is well- settled that power to tax cannot be inferred by implication; there must be a charging section specifically empowering the State to levy tax. Section 18(2)(q) speaks of fee to be paid on applications for revision and not on minerals, mineral rights or mining land. Section 25 speaks of 'recovery of tax and fee' amongst others. Two observations are spontaneous. Firstly a provision for recovery, being a machinery provision, cannot be read as empowering the levy of tax or fee. Secondly, it speaks of tax or fee being due to the Government without defining the same and without qualifying the word "Government' with Central or State, A perusal of several provisions of the Act and in particular Sections 9A, 15, 15(1-A)(a) and (g), 15(3), 17(3), 21(5), 25 goes to show that the power of recovery is invariably given to the State Government and obviously the word 'Government' in Section 25 refers to the State Government, which only is

empowered to recover the sums due as arrears of land revenue.

The relevant principles of law laid down in M.A. Tulloch Which we have extracted and reproduced hereinabove, do not run contrary to the view we are taking in the present case. The recovery of fee could have been held to be vitiated in that case because the field of mining activity in manganese ore was fully covered by the MMDR Act, 1957, and the levy under the impugned State Act, as found by the two Constitution Benches in Hingir- Rampur Coal Co. and M.A. Tulloch was being collected for the development of the mining areas in the State. The doctrine of pith and substance noted and applied in Hingir-Rampur Coal Co. has been restated In M.A. Tulloch wherein the Constitution Bench had said,, as noted hereinabove, that the Orissa Act was concerned with the development of the mining areas notified under the Act while the Central Act on the other hand dealt more directly with the control of all industries Including of course the industry of coal and the object of the Central Act was to regulate the scheduled industry with a view to make improvement and development of the service that they may render to the society and thus assisting the solution of the larger problem of the national economy, In spite of the declaration made by Section 2 of the Central Act of 1951 considered in the light of its several provisions ft was found difficult to hold that the field covered by the Central Act was the same as the field covered by the impugned Orissa Act. None of the two Constitution Benches have held that power to regulate and develop with which the Central Act of 1951 was concerned would include the power to levy tax and fee, which power, shall have to be traced to some other entry in List I. List I contains a general entry i.e. Entry 96 for levy of fee in respect of matters in List I but so far as levy of tax is concerned there are separate .and specific entries (see Entries 82 to 92B in List I and Entries 45 to 63 in List II). Further in view of Entry 50 of List II, Parliament can by any law relating to mineral development limit or place limitations on the power of the State Legislatures to impose taxes on mineral rights.

Power to tax not a residuary power Article 265 mandates - no tax shall be levied or collected except by authority of law. The scheme of the Seventh Schedule reveals an exhaustive enumeration of legislative subjects, considerably enlarged over the predecessor Government of India Act. Entry 97 in List I confers residuary powers on Parliament, Article 248 of the Constitution which speaks of residuary powers of legislation confers exclusive power on Parliament to make any law with respect to any matter not enumerated in the Concurrent List or the State. List. At the same time, it provides that such "residuary power shall include the power of making any law imposing a tax not mentioned in either of those Lists. It is, thus, clear that if any power to tax is clearly mentioned in List -II the same would not be available to be exercised by Parliament based on the assumption of residuary-power. The Seven-Judges Bench in Union of India v. Harbhajan Singh Dhillon, ruled, by a majority of 4:3, that, the power to legislate in respect of a matter does not carry with It a power to impose a tax under our constitutional scheme. According to Seervai (Constitutional Law of India, Fourth/Silver Jubilee Edition, Vol.3, para 22.191):- "Although in Dhillon's case conflicting views were expressed about the nature of the residuary power, the nature of that power was: stated authoritatively in Kesvananda's Case. Earlier, in Golak Nath's case , Subha Rao C.L (for himself, Shah, Sikri, Shelat and Vaidyalingam 33) had held that Article 368 only provided the procedure for the amendment of the Constitution, but that the power to amend the Constitution was to be found in the residuary power conferred on Parliament by Articles 245 and 246(1) read with entry 97, List I and by Article 248. Seven out of the nine judges who overruled Golak Nath's Case held, inter alia,

that the power to amend the Constitution could not be located in the residuary powers of Parliament, Hegde and Mukherjea JJ held that - "It is obvious that these Lists have been very carefully prepared. They are by and large exhaustive. Entry 97 in List I was included to meet same unexpected and unforeseen contingencies. It is difficult to believe that our Constitution-makers who were keenly conscious of the importance of the provision relating to the amendment of the Constitution and debated that question for several days, would have left the important power hidden in entry 97 of List I leaving to the off chance of the courts locating that power in that entry. We are unable to agree with those learned judges when they sought to place reliance on Arts. 245, 246 and 248 and entry 97 of List I for the purpose of locating the power of amendment in the residuary power conferred on the Union." (Italics supplied) Similar views were expressed by five other judges, According to Seervai, "the law laid down in Kesavananda's Case is that if a subject of legislation was prominently present to the minds of the framer of our Constitution, they would not have left it to be found by courts in the residuary power; a fortiori, if a subject of legislative power was not only present to the minds of the framers but was expressly denied to Parliament, it cannot be located in the residuary power of Parliament."

Vide para 22.194 the eminent jurist poses a question: "Does Article 248 add anything to the exclusive residuary power of Parliament under Article 246(1) read with Entry 97 List I to make laws in respect of "any other matter" not mentioned in List II and List III including any tax not mentioned in those Lists?" and answers by saying --"The answer is 'No'."

As to the riddle arising in the context of mines and minerals development legislation by reference to the Entries in List I and List II, Seervai states -- "the regulation of mines and mineral development is a subject of exclusive State legislation, but for the limitation placed upon that power by making it subject to the provisions in that behalf in List I. If Parliament does not exercise its power under Entry 54, List I, the States' power under Entry 23, List II would remain intact. If Parliament exercised Its power under Entry 54, List I, only on a part of the field, as for example, major minerals, the States' legislative power over minor minerals would remain intact." (para 22.195 at p. 2433) Power to tax must be express, else no power to tax There is nothing like an implied power to tax. The source of power which does not specifically speak of taxation cannot be so interpreted by expanding its width as to include therein the power to tax by implication or by necessary inference. States Cooley in Taxation (Vol. 1, Fourth Edition) -- "There is no such thing as taxation by implication, the burden is always upon the taxing authority to point to the act of assembly which authorizes the imposition of the tax claimed." (para 122 at p. 278).

Justice G.P. Singh in Principles of Statutory Interpretation (Eighth Edition, 2001) while dealing with general principles of strict construction of taxation statutes states "A taxing statute is to be strictly construed. The well-established rule in the familiar words of Lord Wensleydale, reaffirmed by Lord Halsbury and Lord Simonds, means : "The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words". In a classic passage Lord Cairns stated the principle thus ; "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject Within the letter of the law, the subject is free, however apparently within

the spirit of law the case might otherwise appear to be. In other words, if there is admissible in any statute, what is called an equitable construction, certainly, such a construction Is not admissible in a taxing statute where you can simply adhere to the words of the statute. Viscount Simon quoted with approval a passage from Rowlatt, J. expressing the principle in the following words : "in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing Is to be implied. One can only look fairly at the language used." (at p.635) The judicial opinion of binding authority flowing from several pronouncements of this Court has settled these principles; (i) in interpreting a taxing statute, equitable considerations are entirely cut of place. Taxing statutes cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency;

(ii) before taxing any person it must be shown that he fails within the ambit of the charging section by clear words used In the Section; and (iii) if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. There is nothing unjust in the tax- payer escaping if the letter of the law falls to catch him on account of Legislature's failure to express itself clearly. (See, Justice G.P. Singh, ibid, pp.638-639).

Power to tax is not an incidental power. According to Seervai, although legislative power includes all incidental and subsidiary power, the power to impose a tax is not such a powerunder our Constitution, It is for this reason that it was held that the power to legislate in respect of inter- state trade and commerce (Entry 42, List I, Schedule 7) did not carry with it the power to tax the sale of goods in inter-state trade and commerce before the insertion of Entry 92A in List I and Such power belonged, to the States under Entry 54 in List II. Entry 97 in List I also militated against the contention that the power to tax is an incidental power under our Constitution (See: Constitutional Law of India, H.M. Seervai, Fourth/Sliver Jubilee Edition, Vol. 3, para 22.20).

Power to regulate and control and power to tax --determining the nature of legislation by reference to the power exercised It is of paramount significance to note the difference between power to regulate and develop' and 'power to tax'.

The primary purpose of taxation is to collect revenue. Power to tax may be exercised for the purpose of regulating an industry, commerce or any other activity; the purpose of levying such tax, an Impost to be more correct, is the exercise of sovereign power for the purpose of effectuating regulation though Incidentally the levy may contribute to the revenue. Cooley in his work on Taxation (Vol.1, Fourth Edition) deals with the subject in paragraphs 26 and 27. 'There are some cases in which levies are made and collected under the general designation of taxes, or under some term employed In revenue laws to indicate a particular class of taxes, where the imposition of the burden may fairly be referred to some other authority than to that branch of the sovereign power of the state under which the public revenues are apportioned and collected. The reason is that the imposition has not for its object the raising of revenue but looks rather to the regulation of relative rights, privileges and duties as between individuals; to the conservation of order in the political society, to the encouragement of industry, and the discouragement of pernicious employments. Legislation for

these purposes it would seem proper to look upon as being made in the exercise of that authority which is inherent In every sovereignty, to make all such rules and regulations as are needful to secure and preserve the public order, and to protect each individual in the enjoyment of his own rights and privileges by requiring the observance of rules of order, fairness and good neighborhood, by all around him. This manifestation of the sovereign authority is usually spoken of as the police power. The power to tax must be distinguished from an exercise of the police power. (State v. Tucker, 56 S.C. 516). The political power is a very different one from the taxing power, in its essential principles, though the taxing power, when properly exercised, may indirectly tend to reach the end sought by the other in some cases."(p.94) "The distinction between a demand of money under the police power and one made under the power to tax is not so much one of form as of substance." (p.95). The distinction between a levy in exercise of police power to regulate and the one which would be in nature of tax is illustrated by Cooley by reference to a license. He says - "So-called license taxes are of two kinds. The one is a tax for the purpose of revenue. The other, which is, strictly speaking, not a tax at all but merely an exercise of the police power, is a fee imposed for the purpose of regulation." (p.97) "Suppose a charge is imposed partly for revenue and partly for regulation. Is it a tax or an exercise of the police power? Other considerations than those which regard the production of revenue are admissible in levying taxes, and regulation may be kept in view when revenue is the main and primary purpose. The right of any sovereignty to look beyond the immediate purpose to the general effect neither is nor can be disputed. The government has general authority to raise a revenue and to choose the methods of doing so; it has also general authority over the regulation of relative rights, privileges and duties, and there is no rule of reason or policy in government which can require the legislature, when making laws with the one object in view, to exclude carefully from its attention the other. Nevertheless cases of this nature are to be regarded as cases of taxation. If revenue is the primary purpose, the imposition is a tax. Only those cases where regulation is the primary purpose can be specially referred to the police power. If the primary purpose of the legislative body in imposing the charge is to regulate, the charge is not a tax even if it produces revenue for the public." (Cooley, ibid, pp.98-99) This Court in seven-judges Bench decision in Synthetics and Chemicals Ltd. and Ors. v. State of U.P. and Ors., agreed that regulation is a necessary concomitant of the police power of the State. However, it was an American doctrine and in the opinion of the Court it was not perhaps applicable as such in India. The Court endorsed recognizing the power to regulate as a part of the sovereign power of the State exercisable by the competent legislature. Brushing aside the need for discussion on the question - whether under the Constitution the States have police power or not, the Court accepted the position that the State has the power to regulate. However, in the garb of exercising the power to regulate, any fee or levy which has no connection with the cost or expenses of administering the regulation, cannot be imposed; only such levy can be justified as can be treated as part of regulatory measure. Thus, the State's power to regulate perhaps not as emanation of police power but as an expression of the sovereign power of the State has its limitations. In our opinion these observations of the Court lend support to the view we have formed that a power to regulate, develop or control would not include within its ken a power to levy tax or fee except when it is only regulatory. Power to tax or levy for augmenting revenue shall continue to be exercisable by the Legislature in whom it vests i.e. the State Legislature in spite of regulation or control having been assumed by another legislature i.e. the Union. State Legislation levying a tax in such manner or of such magnitude as can be demonstrated to be tampering or intermeddling with Center's regulation and control of an industry can perhaps be the

exception to the rule just stated.

In Synthetics and Chemicals and Chemicals Ltd. and Ors. v. State of U.P. and Ors. the question before the seven-Judges Bench was as to the power of State to legislate on industrial alcohol as a subject. Entry 8 in List II and Entry 33 in List III came up for consideration. Their Lordships noticed the provisions of Industries (Development and Regulation) Act, 1951 (as amended in 1956), especially Section 18-G thereof, and held that the provisions evinced dear intention of the Union to occupy the whole field relating to industrial alcohol and therefore the State could not claim to regulate it. The power with regard to the control of alcoholic industries was considered and their Lordships concluded that in spite of the Central Legislation operating in the field the State was left with the following powers available to legislate In respect of alcohol - "(a) it may pass any legislation in the mature of prohibition of potable liquor referable to Entry 6 of List II and regulating powers.

(b) It may lay down regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol.

(c) The State may charge excise duty on potable alcohol and sales tax under Entry 52 of List II. However, sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on industrial alcohol.

(d) However, in case State is rendering any service, as distinct from its claim of so-called grant of privilege, it may charge fees based on quid pro quo. See in this connection, the observation of Indian Mica case.

It may be seen that the power to levy sales tax on industrial alcohol was available to the State but for the provisions of the Ethyl Alcohol (Price Control) Orders on account of which the State could not charge sales tax on industrial alcohol. The State could levy any fee based on quid pro quo. The seven-Judges Bench decision lends support to the view we are taking that in the field occupied by the Centre for regulation and central, power to levy tax and fee is available to the State so long as it doss not interfere with the regulation - the power assumed and occupied by the Union.

Before a seven-Judges Bench In The Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan and Ors., the question arose if State could make laws imposing regulatory restrictions on free trade, commerce and intercourse guaranteed by Article 301 of constitution and whether a State tax could be treated as impeding freedom under Article 301 of Constitution. The following statement of law by majority speaking through S.K. Das, J. (at pp.524-525) is very much in point for our purpose:- "Such an interpretation would, in our opinion, seriously affect the legislative power of the State Legislatures which power has been held to be plenary with regard to subjects in list II. The States must also have revenue to carry out their administration and there are several items relating to the imposition of taxes in list II. The Constitution-makers must have intended that under those items the States will be entitled to raise revenue for their own purposes. If the widest view is accepted, then there would be for all practical purposes, an end of State autonomy even within the fields allotted to them under the distribution of powers envisaged by our Constitution. An examination of the entries in the lists of the Seventh Schedule to the Constitution would show that

there are a large number of entries in the State list (list II) and the Concurrent list (list III) under which a State Legislature has power to make laws. Under some of these entries the State Legislature may impose different kinds of taxes and duties, such as property tax, sales tax, excise duty etc., and legislation in respect of any one of these items may have an indirect effect on trade and commerce. Even laws other than taxation laws, made under different entries in the lists referred to above, may indirectly or remotely affect trade and commerce. If it be held that every law made by the Legislature of a State which has repercussion on tariffs, licensing, marketing regulations, price-control etc., must have the previous sanction of the President, then the Constitution in so far as it gives plenary power to the States and State Legislatures in the fields allocated to them would be meaningless."

Their Lordships also observed (at p.526-527) that the freedom guaranteed by Article 301 does not mean freedom from taxation. The power of levying tax is essentially for the very existence of Government, though its exercise may be controlled -by constitutional provisions made in that behalf. Power to tax is not outside constitutional limitations. It is for Parliament to exercise power in the field made available to it by Entry 52 and 54 in List I. It is also for Parliament to state by law the limitations - and the sweep thereof - which it may choose to impose on field available to stats for taxation by reference to Entry 50 !n List IT, It may not be for Courts to venture into enquiry in just an individual case to find and hold what tax would hamper mineral development if Parliament has chosen to observe silence by not legislating or failed to say something explicit.

A reasonable tax or fee levied by State legislation cannot, in our opinion, be construed as trenching upon, Union's power and freedom to regulate and control mines and minerals.

India Cement and decision post India Cement, based thereon :

India Cement is clearly distinguishable so far as the present cases are concerned. As we have already pointed cut it was a case of cess levied by Sate Legislature on royalty and not on mineral rights or land and buildings. That is why the levy was held ultra vires. Seervai's comment and objective criticism on Indian Cement is noteworthy (See - ibid, para 22.257 C). Royalty is income and State Legislatures are not competent to tax an income.' This single ground was enough to strike-down the levy of cess impugned in India Cement. Nothing more was needed. The Orissa Cement Ltd. (supra) also as the very opening part of the report shows, dealt with the levy of a cess by the State based on the royalty derived from mining lands which was held to be directly and squarely governed by India Cement and, therefore, struck down.

In State of Orissa and Ors. v. Mahanadi Coalfields Ltd. and Ors., 1995 Supp. (2) SCC 686, the impugned levy by the State Legislature was a tax of Rs.32 per thousand acre on coal bearing lands, It was sought to be defended as falling under Entry 49 or in the alternative under Entry 23 or Entry 50 in List II. The attack was that the legislation being one on mineral lands and mineral rights and the Parliament having enacted the Mines and Minerals (Development and .Regulation) Act, 1957, the field was entirely covered and the State Legislature was incompetent to levy the tax. Reliance was placed on India Cement, Orissa Cement and Buxa Dooars Tea Co. Ltd. (supra). Only mineral bearing land and coal bearing land were the subject of the levy of tax. The three-Judges Bench speaking

through K.S. Paripoornan, J., concluded that the charging section of the impugned Act imposed a tax on the minerals also, and was not confined to a levy on land or surface characteristic of the land. All non-mineral bearing, lands and non-coal bearing lands were left out of the levy. The levy was struck down as levying a tax not on land (related to surface 'characteristic...of the land) but on minerals and mineral rights, Goodricke's case (supra) was cited before their Lordships and it was observed that in Goodricke's case the impugned levy was held to be a tax on land and that makes all the difference.

We find it difficult to subscribe to the reasoning adopted in Mahanadi Coalfields Ltd..

Buxa Dooars Tea Co. Ltd. and Ors. v. State of West Bengal and Ors. is a two-Judges Bench decision. Rural employment cess was levied at the rate of Rs.5 per kg. on all dispatches of tea. The rate was changed from time to time but that is not very material. A careful reading of the report shows that the primary challenge was on the ground of the impugned cess being violative of Article 14 and 301 of the Constitution as it had the direct and immediate effect of impeding the movement of goods throughout the territory of India, The challenge was sustained. Incidentally, and very briefly, their Lordships have in one paragraph also dealt with the question of legislative competence of the State Government by reference to Entry 49 in List II. Their Lordships have observed, "if the legislation is in substance legislation in respect of dispatches of tea, legislative authority must be found for it with reference to some other entry. No Entry in Lists II and III is pertinent, Moreover, the Union had, in public interest, assumed con(SIC) ver the tea industry including the tea trade and control of tea prices." Therefore, the Court concluded that the impugned legislation was also void for want of legislative competence as it pertained to a covered field. Suffice it to observe that to the extent the learned Judges have dealt with the challenge by reference to legislative competence of the State Legislature under Entry 49 in List II, there is not much of discussion and is just incidental and the observations are too wide to be countenanced, Another distinguishing feature common to these decisions is that the distinction and demarcation of fields of operation between Central and State Acts by reference to the doctrine, of pith and substance seems to have been not adverted to.

From Baijnath Kadio to Eastern Coalfields Before we proceed to deal with Goodricke, it will be necessary to complete the chain of thought by referring to four decisions and the law which developed therewith between the years 1970 and 1982 which can be termed a period by itself on the issues at hand.

In Baijnath Kadio v. The State of Bihar and Ors. the writ-petitioners were holding mining leases for minor minerals. The State of Bihar amended the Bihar Minor Mineral Concession Rules, 1964, whereby with affect from 27.1.1964 the rates of dead rent, royalty and surface rent were revision Additional demands were raised. It was submitted that in view of the provisions contained in the MMOR Act, 1957 incorporating (vide, Section 2 thereof) a declaration within the meaning of Entry 54 in List I, it was not competent for the State Legislature to revise the rates as abovesaid. This Court held that the whole of the legislative field relating to minor minerals was covered by the Central Legislation by virtue of the declaration made by Section 2 and the enactment of Section 15 in the Act, thereby leaving no scope for the enactment of the second proviso to Section 10 of t he Bihar Land Reforms Act whereunder the powers to Increase the royalty, dead rent and surface rent were

sought to be exercised. There were preexisting old leases which could have been modified only by a legislative enactment made by the Parliament on the Sines of Section 16 of Act No. 67 of 1957. Any attempt to regulate such old mining leases will fall not In Entry 18 but in Entry 23 of List II even though the regulation incidentally touches them. The pith and substance of the amendment of Section 10 of the Bihar Land Reforms Act fails within Entry 23 although it incidentally touches land and not vice versa. Entry 18 did not come to the rescue of the State Government and Entry 23 was subject to the provisions of List I. The impugned provision and the action taken thereunder were held ultra vires the Constitution. The decisions of this Court in The Hingir Rampur Coal Co. Ltd. & Ors. and M/s M.A. Tulloch and Co. were referred to. However, the law laid down by the Constitution Bench (vide para 13) is significant. It held :-

".....It is open to Parliament to declare that it is expedient in the public interest that the control should rest in Central Government. To what extent such a declaration can go is for Parliament to determine and this must be commensurate with public interest. Once this declaration is made and the extant laid down, the subject of legislation to the extent laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the State after such declaration and trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State Legislature."

[underlining by us] H.R.S. Murthy v. The Collector of Chittoor and Anr.- (1964) 6 SCR 566 was a writ petition filed under Article 32 of the Constitution laying challenge to the validity pf notices of demand for the payment of land cess under the Madras District Boards Act, 1920. The mining lease dated September 15, 1953, authorised the lessee to work and win iron ore in a tract, of land in Chittoor; dead rent, royalty and surface rent were payable under the mining lease. The District Board levied land cess on the annual rental value of all occupied lands. The challenge to the constitutional validity of the land cess was dismissed. The Court held:-

(1) It is therefore not possible to accept the contention, that the fact that the lessee or licensee pays a royalty on the (SIC)aral won, which is in excess of what he would pay if his right over the land extended only to the mere use of the surface land, places it in a category different from other types where the lessee uses the surface of the land alone. In each case the rent which a lessee or licensee actually pays for the land being the test, it is manifest that the land cess is nothing else except a land tax.

(2) When a question arises as to the precise head of legislative power under which a taxing statute has been passed, the subject for enquiry is what in truth and substance is the nature of the tax. No doubt, in a sense but in a very remote sense, it has relationship to mining as also to the mineral won from the mine under a contract by which royalty is payable on the quantity of mineral extracted, But that, does not stamp it as a tax on either the extraction of the mineral or on the mineral right. It is unnecessary for the purpose of this case to examine the Question as to what exactly is a tax on mineral rights seeing that such a tax is not leviable by Parliament but only by the State and the sols limitation on the State's power to levy the tax is that it must not interfere with a law made by Parliament as regards mineral development. Our attention was not invited to the provision of any such law enacted by Parliament. In the context of Sections 78 and 79 and the scheme of those

provisions it Is clear that the land (SIC)ss is in truth a "tax on lands" within Entry 49 of the State List.

The only decisions referred to in H.R.S. Murthy were Hingir Rampur Coal Co. Ltd. & Ors.< and M.A. Tulloch.< In State of Haryana and Anr.< v. Chanan Mal, referring to the provisions of the MMDR Act, 1957 and a State enactment of Haryana, (the constitutional validity whereof was under challenge) the Constitution Bench held that subject to the overall supervision of the Central Government, the State Government has a sphere of its own power and can take legally specified action under the Central Act and rules made thereunder. Thus, the whole field of control and regulation under the provisions of the Central Act 67 of 1957 cannot be said to be reserved for the Central Government.

Western Coalfields Ltd. v. Special Area Development Authority, Korba and Anr., is a Division Bench decision. The M.P. Municipality Act, a State enactment, levied property tax payable by the owner of the land or buildings and could also be recovered from the occupier of the land or the building in certain contingencies. The validity of the property tax was upheld by reference to Entry 5 (Local Government) read with Entry 49 (Taxes on lands and buildings) in List II. 'The availability of the MMDR Act., 1957, and the declaration incorporated in Section 2 thereof did not come in the way of the validity of the property tax inasmuch as the property tax levied by the State Government through municipalities had nothing to do with the development of mines. The Court opined that the functions, powers and duties of municipalities did not become part of the occupied field by virtue of declaration under Section 2 of the Act No. 67 of 1957 and the competence of the State to enact laws for municipal administration will remain unaffected by that declaration. Bajinath Kadlo was distinguished. Goodricke's case Now, we come to Goodricke's case. The impugned provisions were incorporated by the West Bengal Taxation Laws (Second Amendment) Act 1989 into the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976, Both the amendments were identical and have been set out in the earlier part of this judgment.

While the State sought to justify the levy of impugned cess by reference to Entry 49 of List II, the writ petitioner laid challenge to the validity of levy on very many grounds. It was submitted, firstly, that to bring the levy within the field of Entry 49 of List II it must be directly upon the land whereas the levy in question is really a tax on production of tea, a subject covered by Entry 84 of List I; secondly, that a tax on land must be a constant figure whereas the impugned levy varies from year to year based as it is on the quantity of tea produced in a tea estate in a given year and where there is no production of tea leaves at all in a particular year, no cess would be payable by tea estate in that year; thirdly, that the definition of 'tea estate' further establishes the absence of any nexus between 'cess' and the "land"; land covered by the factory and building and even fallow land, is included within the meaning of 'tea estate' and if no tea leaves are produced and plucked, there would not be levy on the estate at all; and fourthly, that the levy is clearly invalid in view of the seven-Judges Bench decision of this Court in India Cement and the three- Judges Bench decision in Orissa Cement. It was urged that the impugned amendment was brought to remove the defact in the levy pointed out in Buxa Dooars, but the flaw was persisting. Jeevan Reddy, J., spoke for the three Judges Bench, placing on record their unanimous opinion. The Court noticed, vide para 10, the real factual situation as generally obtains about the tea estate. The definition of 'tea estate' as

incorporated by the amendment is a well-understood entity and hence is legitimately and reasonably capable of being classified as a separate category for the purpose of taxation and the rate of tax. The Court, on a near -exhaustive review of the available decisions on the point, arrived at a few conclusions which, so far as relevant for our purposes, are summed up as under:

(i) a financial levy must have a mode of assessment but the mode of assessment does not determine the character of a tax. The nature of machinery for assessment is often complicated and is not of much assistance except insofar as it may throw light on the general character of the tax. The annual value is not necessarily an actual income but only a standard by which income may be measured. Merely because the same standard or mechanism of assessment has been adopted in a legislation covered by an entry under the Union List and also by a legislation covered by an entry in the State List, the latter legislation cannot be said to have encroached upon the field meant for the former;

(ii) the subject of tax is different from the measure of the levy;

(iii) merely because a tax on land or building is imposed by reference to its income or yield, it does not cease to be a tax on land or building. The income or yield of the land/building is taken merely as a measure of the tax; it does not alter the nature or character of the levy. It still remains a tax on land or building. No one can say that a tax under a particular entry must be levied only in a particular manner. The legislature is free to adopt such method of levy as it chooses. So Song as the essential character of levy is not departed from within the four corners of the particular entry, the manner of levying the tax would not have any vitiating effect;

(iv) ample authority is available to hold that a tax on land within the meaning of Entry 49 of List II can be levied with reference to the yield or income. Whether an agricultural land or an orchard or a tea estate, they do require some capital and labour to make them yield or to produce income which yield or income can without difficulty be taken as measure for quantifying the tax which would undoubtedly be a levy on the land;

(v) It is not an essence of a tax, nor a condition of its validity, that the tax must, be constant and uniform for all the years or for a particular number of years. The tax on land or building can be levied and assessed by reference to previous year's income or yield. In short, it is open to the State Legislature to adopt such formula as it thinks appropriate for levying the tax and so long as the character of the tax remains the same as contemplated by the entry, it does not matter how the tax is calculated, measured or assessed;

(vi) it is permissible to classify land by reference to its user as a separate unit for the purpose of levy of cess. Tea estate, as a separate category of land, is a valid classification;

(vii) the fact that the Tea Act empowers the Central Government to levy a duty or cess upon tea or tea leaves for the purposes of that Act can in no manner deprive the State Legislature of its power to tax the Sand comprised in a tea estate. By levying the cess the State Legislature is not seeking to control the cultivation of tea but only to levy the tax on land comprised in a tea estate. The fact that ultimately the tax may have to be borne by the tea industry is no ground for holding that the said

levy is upon the tea industry. The State Legislature is not denuded of its power to levy a tax upon the land or upon a building merely because such land or building is held or owned by an industry which is governed by a central legislation.

On applying the abovesaid principles the Court concluded that taking the quantum of yield of a tea estate for measuring the amount of tax is perfectly valid and cannot be equated to the situation in India Cement. We may observe that the reasoning adopted in Goodricke accords with the reasoning in Hingir-Rampur.

Having made an independent review of several judicial decisions and the several settled legal principles, as dealt with hereinabove, we are satisfied that the Goodricke's case (supra) was correctly decided and the law laid down therein is correct and supported by authority in abundance. The distinguishing features which exclude the applicability of law laid down in India Cement and Orissa Cement to the fact situations like the ones we are called upon to deal with, were rightly pointed out in Goodricke and those very reasons additionally explained by us do not permit the cases on hand being ruled by India Cement and Orissa Cement.

In a nutshell The relevant principles culled out from the preceding discussion are summarized as under:-

(1) In the scheme of the Lists in the Seventh Schedule, there exists a clear distinction between the general subjects of legislation and heads of taxation. They are separately enumerated.

(2) Power of 'regulation and control' Is separate and distinct from the power of taxation and so are the two fields for purposes of legislation. Taxation may be capable of being comprised in the main subject of general legislative head by placing an extended construction, but that is not the rule for deciding the appropriate legislative field for taxation between List I and List II. As the fields of taxation are to be found clearly enumerated in Lists I and II, there can be no overlapping. There may be overlapping in fact but there would be no overlapping in law. The subject matter of two taxes by reference to the two Lists is different. Simply because the methodology or mechanism adopted for assessment and quantification is similar, the two taxes cannot be said to be overlapping. This is the distinction between the subject of a tax and the measure of a tax.

(3) The nature of tax levied is different from the measure of tax. While the subject of tax is clear and well defined the amount of tax is capable of being measured in many ways for the purpose of quantification, Defining the subject of tax is a simple task; devising the measure of taxation is a far more complex exercise and therefore the legislature has to be given much more flexibility in the latter field. The mechanism and method chosen by Legislature for quantification of tax is not decisive of the nature of tax though it may constitute one relevant factor out of many for throwing light on determining the general character of the tax. (4) Entries 52, 53 and 54 in List I are not heads of taxation. They are general entries. Fields of taxation covered by Entries 49 and 50 in List II continue to remain with State Legislatures in spite of Union having enacted laws by reference to Entries 52, 53, 54 in List I. It is for the Union to legislate and impose limitations on the States' otherwise plenary power to levy taxes on mineral rights or taxes on lands; (including mineral

bearing lands) by reference to Entry 50 and 49 in List II and lay down the limitations on State's power, if it chooses to do so, and also to define the extent and sweep of such limitations.

(5) The Entries In List I and List II must be so construed as to avoid any conflict. If there is no conflict, an occasion for deriving assistance from non-obstante clause "subject to" does not arise. If there is conflict, the correct approach is to find an answer to three questions step by step as under:

One - Is it still possible to effect reconciliation between two Entries so as to avoid conflict and overlapping?

Two - In which Entry the impugned legislation fails by finding out the pith and substance of the legislation?

and Three - Having determined the field of legislation wherein the impugned legislation fails by applying doctrine of pith and substance, can an incidental trenching upon another field of legislation be Ignored? (6) 'Land'", the term as occurring in Entry 49 of List II, has a wide connotation, Land remains land though it may be subjected to different user. The nature of user of the land would not enable a piece of land being taken out of the meaning of land itself. Different uses to which the land is subjected or is capable of being subjected provide basis for classifying land into different identifiable groups for the purpose of taxation. The nature of user of one piece of land would enable that piece of land being classified separately from another piece of land which is being subjected to another kind of user, though the two pieces of land are identically situated except for the difference in nature of user. The tax would remain a tax on land and would not become a tax on the nature of its user. (7) To be a tax on land, the levy must have some direct and definite relationship with the land. So long as the tax is a tax on land by bearing such relationship with the land, it is open for the legislature for the purpose of levying tax to adopt any one of the well known modes of determining the value of the land such as annual or capital value of the land or its productivity. The methodology adopted, having an indirect relationship with the land, would not alter the nature of the tax as being one on land.

(8) The primary object and the essential purpose of legislation must be distinguished from its ultimate or incidental results or consequences, for determining the character of the levy. A levy essentially in the nature of a tax and within the power of State Legislature cannot be annulled as unconstitutional merely because it may have an affect on the price of the commodity. A State legislation, which makes provisions for levying a cess, whether by way of tax to augment the revenue resources of the State or by way of fee to render services as quid pro quo but without any intention of regulating and controlling the subject of the levy, cannot be said to have encroached upon the field of 'regulation and control' belonging to the Central Government by reason of the incidence of levy being permissible to be passed on to the buyer or consumer, and thereby affecting the price of the commodity or goods. Entry 23 in List II speaks of regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union, Entries 52 and 54 of List I are both qualified by the expression "declared by Parliament by law to be expedient in the public interest". A reading in juxtaposition shows that the declaration by Parliament must be for the 'control of industries' in Entry 52 and for regulation of mines or for

mineral development' in Entry 54. Such control, regulation or development must be 'expedient in the public interest'. Legislation by the Union in the field covered by Entries 52 and 54 would not like a magic touch or a taboo denude the entire field forming subject matter of declaration to the State Legislatures. Denial to the State would extend only to the extent of the declaration so made by Parliament. In spite of declaration made by reference to Entry 52 or 54, the State would be free to act in the field left out from the declaration. The legislative power to tax by reference to Entries in List II is plenary unless the entry itself makes the field 'subject to' any other entry pr abstracts the field by any limitations imposable and permissible. A tax or fee levied by State with the object of augmenting its finances and in reasonable limits does not ipso facto trench upon regulation, development or control of the subject. It is different if the tax or fee sought to be levied, by State can itself be called regulatory, the primary purpose whereof is to regulate or control and augmentation of revenue or rendering service is only secondary or incidental.

(9) The heads of taxation are clearly enumerated in Entries 83 to 92B in List I and Entries 45 to 63 in List II. List III, the Concurrent List, does not provide for any head. of taxation. Entry 96 in List I, Entry 66 in List II and Entry 47 in List III deal with fees. The residuary power of legislation in the field of taxation spelled out by Article 248(2) and Entry 97 In List I can be applied only to such subjects as are not included in Entries 45 to 63 of List II. It follows that taxes on lands and buildings in Entry 49 of List II cannot be levied by the Union. Taxes on mineral rights, a subject in Entry 50 of List II can also not be levied by the union though as stated in Entry by itself the union may impose limitations on the power of the State and such limitations, if any, imposed by the Parliament by law relating to mineral development and to that extent shall circumscribe the States power to legislate. Power to tax mineral rights is with the States; the power to lay down limitations on exercise of such power, in the interest of regulation, development or control, as the case may be, is with the union. This is the result achieved by homogeneous reading of Entry 50 in List II and Entries 52 and 54 in List I. So long as a tax or fee on mineral rights remains in pith and substance a tax for augmenting the revenue resources of the State or a fee for rendering services by the State and it does not impinge upon regulation of mines and mineral development or upon control of industry by the Central Government, it is not unconstitutional.

The Result: - individual cases (A) Coal Matters The amendments incorporated by the West Bengal Taxation Laws (Amendment) Act 1992 w.e.f. 1.4.1992 into the provisions of the West Bengal Primary Education Act 1973 and the West Bengal Rural Employment and Production Act 1976 classify the land into three categories: (i) coal-bearing land, (ii) mineral bearing land (other than coal-bearing land) or quarry and (iii) land other than the preceding two categories. These three are well-defined classifications by reference to the user or quality and the nature of product which it is capable of yielding. The cess is levied on the land. The method of quantifying the tax is by reference to the annual value thereof. It is well-known that one of the major factors contributing to the value of the land is what it produces or is capable of producing. Merely because the quantum of coal produced and dispatched or the, quantum of mineral produced and dispatched from the land is the factor taken into consideration for determining the value of the land, it does not become a tax on coal or minerals. Being a tax on land it is fully covered by Entry 49 in List II. Assuming it to be a tax on mineral rights it would be covered by Entry 50 in List II. Taxes on mineral rights lie within the legislative competence of the Stats Legislature "subject to" any limitation imposed by Parliament by

law, relating to mineral development. The Central legislation has not placed any limitation on the power of the States to legislate In the field of taxation on mineral rights. The challenge to constitutional validity of State legislation is founded on non-availability of legislative field to State; it has not been the case of any of the writ petitioners that there are limitations enacted by Central legislation and the State of West Bengal has breached or crossed those limits. Simply because incidence of tax is capable of being passed on to buyers or consumers by the mine owners with an escalating affect on the price of the coal, it cannot be inferred that the tax has an adverse effect on mineral development. Entry 23 in List II. speaks of regulation of mines and mineral developments, subject to the provisions of List I with respect to regulation and development under the control of the Union. The Central Legislation has taken over regulation and development of mines, and mineral development in public interest. By reference to Entry 50 of List II and Entry 54 in List I, the Central legislation has not cast any limitations on the State Legislature's power to tax mineral rights, or land for the matter of that. The impugned cess is a tax on coal-bearing and mineral-bearing land. It can at the most be construed to be a tax on mineral rights. In either case, the impugned cess is covered by Entries 49 and 50 of List II. The West Bengal Taxation Laws (Amendment) Act 1992 must be and Is held to be intra vires the Constitution.

135. We also hold that Mahanadi Coalfield was not correctly decided in as much as India Cement Ltd. and Orissa Cement Ltd. were applied to the levy of a cess to which they did not apply. The learned Judges, deciding Mahanadi Coalfields Ltd. were, with respect, not right in forming the opinion that the cess was levied on minerals and mineral rights and not on land and hence the conclusion reached therein that the State Legislature did not have the legislative competence and that the State legislation trenched upon a field already occupied by Mines and Minerals (Regulation and Development) Act 1957, a Central Legislation is incorrect. State of Orissa and Ors. v. Mahanadi Coalfields Ltd. and Ors., 1995 Supp. (2) SCC 686, is overruled.

(B) Tea Matters Inasmuch as we have held Goodricke Group Ltd. and Ors. v. State of West Bengal and Ors. - (1995) Supp. 1 SCC 707 to have been correctly decided the impugned levy on tea estates as levied by the West Bengal Taxation Laws (Second Amendment) Act 1989, is held to be Intra vires the Constitution. However, in brief, we may state that the impugned levy is of cesses on tea estates i.e. the land forming part of tea estates as defined in the Impugned Act. The land forming part of the tea estates is a well-defined classification. Simply because the method for quantifying the tax is by reference to the yield of the land determinable by taking into account the quantum of tea produced and dispatched, it doss not become a cess on tea or a tax on production of tea or a tax on income of land. The Tea Act of 1953 contains a declaration vide Section 2 thereof that it is expedient in the public interest that the Union should take under its control the tea industry. The declaration is in terms of Entry 52 in List I. Union's assumption of control of tea as Industry and as being expedient in the public interest, does not amount to vesting the power to tax or levy fee in the Central Government by reference to tea or on tea estates. Section 25 of Tea Act empowers the Central Government to levy and collect excise duty on tea produces, which on collection shall be credited to the Consolidated Fund of India. There is no other provision in Tea Act empowering levy of any tax or fee on tea or tea bearing land. The impugned cess is a tax on tea-bearing land, a well-defined Classification and is covered by Entry 49 in List II. We uphold the logic and reasoning assigned and conclusions drawn by this Court in Goodricke on all the counts.

(C) Brick Earth Matters Brick earth is a minor mineral. What we have stated about the impugned cess by reference to coal applies to brick earth as well. The field as to taxation cannot be said to have been covered by Central Legislation by reference to Entry 54 In Schedule I. Quantification of lavy by reference to quantity of brick earth dispatched is a methodology adopted for the purpose of finding out the quantity of brick earth removed from the land, It has a definite and direct co-relation with the land. There is no particular charm about the challenge developed by the writ petitioners laying emphasis on the meaning of the word "dispatched". The gist and substance of what the legislature is taking into account is the brick earth actually removed. "Dispatched" has the effect of taking into account the brick earth "removed" and not simply "moved" and left behind, The average quantity of brick earth utilized in making bricks whether on the brick field Itself or on a place nearby, does involve removal - and consequently dispatch -- of the brick earth from the place where it was to the place where it is captively consumed in making bricks. The fact that methodology for working out the royalty payable and the cess payable is the same, does not have any detrimental effect on the constitutional validity of the cess whether it be treated as one on the land - classified by reference to its production, i.e., the brick earth or as one on mineral rights in brick earth. In either case it would be covered by Entries 49 or 50 in List II. None of the pleas raised has any merit.

(D) Minor-Mineral Matters While narrating the facts, we have quoted in the earlier part of the judgment Section 35 of the U.P. Special Area Development Authorities Act; 1986 (SADA Act, for short) which is the charging section and the Rules framed under the Act. We refer to other relevant provisions of the Act in brief.

Section 3 of the SADA Act authorizes the State Government to declare by notification an are to be a special development area upon its forming an opinion that any area of special importance In the State needs to be developed in a planned manner. The authority is empowered to prepare a master plan for the special development area, to provide for the development of lands in the area, to compulsorily acquire land and so on. The powers are drastic and all-oriented with the object of effecting a planned intensive and extensive development of an area as to which the State Government may have formed an opinion that it was an area of special Importance, Declaring an area as a special development area In view of its special Importance and constituting an authority for the administration and management of the area entrusted with the obligation of Its development is not a matter of empty formality. The empowerment of the authority is accompanied by an obligation cast on it by the State Government through the special legislation of fulfilling the object behind the declaration of special area and constitution of the authority. The Act has been given an over-riding effect by virtue of Section 52 thereof. Mot only the area Is taken out of the administration by the other bodies of local self- government such as municipality or panchayat, but any other master plan or development plan formulated by any other authority ceases to apply to such area.

It was contended on behalf of the writ petitioners-appellants that whether a major or a minor mineral, by virtue of the provisions contained in the MMDR Act, 1957 and U.P, Mine & Minerals Concession Rules 1963, framed in exercise of the power conferred by Section 15 of the MMDR Act, the mineral rights in any land are subject to payment of royalty which is fixed. Sections 8 and 9 of the MMDR Act confer the power to enhance or reduce the rate at which royalty, or dead rent shall be

payable in respect of any mineral. Any cess levied by the State Government would have the effect of increasing the royalty, Section 2 of the MMDR Act makes the requisite declaration to the effect that it is expedient in the public interest that the Union should take under its control the regulators of mines and the development of minerals 'to the extent hereinafter provided'. Such declaration is In the terms contemplated by Entry 54 of List I. It was submitted that the levy of cess by the State Government would be clearly repugnant to the power reserved by the Constitution and the MMDR Act to be exercised only by the Central Government and hence the impugned levy of cess is repugnant to the central legislation. To test the validity of the submission we have to examine the real nature of the levy and find out if such levy encroaches upon the field reserved for central legislation.

All the minerals form part of the land. Minerals are conceived by the mother earth by the process of nature and nurtured over innumerable number of years and delivered on their assuming value and utility for the earthlings. Generally and broadly speaking - and that would suffice for our purpose, a mine is an excavation in the earth which yields minerals. Mineral is something which grows in a mine and is capable of being won or extracted so as to be subjected to a better or precious use. Until extracted, the mineral forms part of the crust of the earth. A mineral right, according to Black's Law Dictionary (Seventh Edition) is the right to search for, develop, and remove materials from the land. It also means the right to receive a royalty based on the production of minerals which right is usually granted by a mineral lease. In both the senses, the right vests in the owner of the land and is capable of being patted with.

It is well settled that it is for the legislature to draft a piece of legislation by making the choicest selection of words so as to give expression to its intention. The ordinary rule of interpretation is that the words used by the legislature shall be given such meaning as legislature has chosen to assign them by coining definitions contained in the interpretation clause and in absence thereof the words would be given such meaning as they are susceptible of in the ordinary parlance, may be by having recourse to dictionaries. However still, the interpretation is the exclusive privilege of the Constitutional Courts and the Court embarking upon the task of interpretation would place such meaning on the words as would effectuate the purpose of legislation avoiding absurdity, unreasonableness, incongruity and conflict. As is with the words used so is with the language employed in drafting a piece of legislation. That interpretation would be preferred which would avoid conflict between two fields of legislation and would rather import homogeneity. It follows as a corollary of the abovesaid statement that while interpreting tax laws the Courts would be guided by the gist of the legislation instead of by the apparent meaning of the words-used and the language employed. The Courts snail have regard to the object and the scheme of the tax law under consideration and the purpose for which the cess is levied, collected and intended to be used. The Courts shall make endavour to search where the impact of the cess falls. The subject matter of levy is not to be confused with the method and manner of assessment or realisation.

It is true that once a central legislation declares regulation of mines and mineral development by law to be expedient in the public interest, the legislation relating to regulation of mines and development of minerals shall fall within the sweep of Entry 54 of List I. The entry has to be liberally and widely interpreted. Yet it cannot be lost sight of that the entry itself employs an expression "to

the extent to which such regulation and development under the control of the Union is declared by Parliament by law" as qualifying the preceding expression stating the subject "regulation of mines and minerals development", Section 2 of MMDR Act too qualifies the relevant declaration by suffixing to It the expression "to the extent hereinafter provided". Section 15 of the Act has excepted and preserved the power of State Governments to make rules in respect of minor minerals. The qualifying words used in Entry 54 of List I end in Section 2 of the MMDR Act contain an in-built indication that in spite of an inclination on the part of the Courts to be liberal in assigning a wide meaning to the scope of the said provisions, the boundaries of limitation are there and the expanse of these provisions cannot be so stretched as to strike at the State Legislations which are adequately accommodated within the field of an Entry in List II which too shall have to be meaningfully and liberally construed.

The MMDR Act enables control over the regulation of mines and the development of minerals being exercised by the Central Government through legislation. The High Court has upheld the validity of the SADA Act by relating it to Entry 5 in List II which is local government'. Any local government exercising the power of governance over a local area shall have to administer, manage and develop the area lying within its territory which cannot be done without raising funds. It is usual for every piece of legislation giving birth to an institution of local government to feed it by incorporating provisions conferring power of generating funds for meeting the expenses of governance, The SA.DA Act intends to achieve a level of local governance which the usual models of local government such as boards and municipalities are not considered capable of achieving and that is why a special development area and a Special Area Development Authority. The fund established under the Act meets expenses of administration needed to be incurred by the authority. The funds cannot be utilized for any purpose other than the administration of the Act. There are pieces of land which though containing a mine yet fall within the territory of special development area. It was pointed out by the respondents before the High Court that in spite of the. Act having been enacted In the year 1986 the successive State Governments, which had preceded, did not take care of the legislation and it was only the then government which became conscious of Its obligations under the SADA Act and commenced identifying special areas requiring development such as Sonbhadra, The imposition of cess envisaged through the SADA Act and the Rules was a step towards developing the special area, It is a matter of common knowledge, and does not need any evidence to demonstrate, that mining activity carried on the land within the special area involves extraction, removal, loading-unloading, and transportation of the minerals accompanied by its natural consequences entailed on the environment and the infrastructure such as roads, water and power supply etc. within the special area. The impugned cess can, therefore, be justified as a fee for rendering such services as would improve the Infrastructure and general development of the area the benefits whereof would be availed even by the stone crushers. Entry 66 in List II is available to provide protective constitutional coverage to the impugned levy-as fee.

As held in Goodricke Group Ltd., 1995 Supp.(1) SCC 707, which we have held as correctly decided, this Court has noted the principle of law well established by several decisions that the measure of tax is not determinative of its essential character. The same transaction may involve, two or more taxable events in its different aspects. Merely because the aspects overlap, such overlapping does not detract from the distinctiveness of the aspects. In our opinion, there is no question of conflict solely

on account of two aspects of the same transaction being utilized by two legislatures for two levies both of which may be taxes or fees or one of which may be a tax and other a fee falling within two fields of legislation respectively available to the two.

As we have pointed out earlier, a cess may be tax or fee. So far as the present case Is concerned, this distinction doss not need any further enquiry by reference to the facts of the case inasmuch as the impugned cess is constitutionally valid considered whether a tax or a fee. We do not propose to continue dealing therewith any more inasmuch as it would be an exercise in futility. We would only place on record briefly our reasons for upholding the validity of the impugned levy whether a tax or a fee.

As a tax the impugned levy of cess is clearly covered by Entry 5 of List II (as the High Court has held, and we add) read with Entries 49 and 50 of List II. There is no challenge to the declaration of the area as a special development area and the constitution of Special Area Development Authority for the administration thereof. In other words, the constitutional validity of the enactment as a whole and the rules framed thereunder is not put in issue. What is under challenge is only the levy of cess. There is nothing wrong in the state legislation levying cess by way of tax so as to generate its funds. Although it is termed as, a 'cess on mineral right', the impact thereof falls on the land delivering the minerals. Thus, the levy of cess also falls within the scope of Entry 49 of List II Inasmuch as the levy on mineral rights does not contravene any of the limitations imposed by the Parliament by law relating to mineral development, it is also covered by Entry 50 of List II. The power to levy any tax or fee lying within the legislative competence of the State Legislature can be delegated to any institution of local government constituted by law within the meaning of Entry 5 in List II. The Entries 5, 23, 49. 50 and 66 of List II provide adequate constitutional coverage to the impugned levy of cess. True it is that the method of quantifying the cess is by reference to the quantum of mineral produced, This would not alter the character of the levy. There are myriad methods of calculating the value of the Sand for the purpose of quantifying the tax reference whereto has already been made by us In the other part of this judgment. Validity of cess upon the land quantified by reference to the quantity of its produce was held to be a levy on the land and hence constitutional in Ralla Ram, AIR 1949 FC 81, Moopil Nair, and Ajoy Kumar Mukherjee. It does not become excise duty on manufacture and production of goods merely on account of having relation with the quantity of product yielded of the land. Rather it is a safe, sound and scientific method of determining the value of the land to which the product relates. The levy of cess considered as a tax is constitutionally valid.

In Western Coalfields Ltd. v. Special Area Development Authority- Korba and Anr., the levy of a cess almost similar to the one in issue In the present case, came up for the consideration of this Court. The levy was for the purpose of enabling the municipal administration to exercise its power and discharge its functions under the Act. It was held that the declaration contained in Section 2 of the MMDR Act does not have the effect of bringing the powers, duties and functions of the local authority within the purview of occupied field. The power to levy tax on lands and buildings within their jurisdiction by the local authority was upheld by this Court.

The following observations of Constitution Bench in Hingir-Rampur Coal Co. squarely apply to SADA Act and SADA Rules for upholding their constitutional validity -

".....In pith and substance the impugned Act is concerned with the development of the mining areas notified under it. The Central Act, on the other hand, deals more directly With the control of all industries Including of course the industry of coal."

"The functions of the Development Councils constituted under this Act prescribed by Section 6(4) bring out the real purpose and object of the Act. It is to increase the efficiency of productivity in the scheduled Industry or group of scheduled industries, to improve or develop the service that such industry or group of industries renders or could render to the community, or to enable such industry or group of industries to render such service more economically."

".....the object of the (Central) Act is to regulate the scheduled industries with a view to improvement and development of the. service that they may render to the society, and thus assist the solution of the larger problem of national economy. It is difficult to hold that the field covered by the declaration made by Section 2 of this Act, considered in the light of its several provisions, is the same as the field covered by the impugned Act. That being so, it cannot be said that as a result of Entry 52 read with Act LXV of 1951 the vires of the impugned Act can be successfully challenged,"

"Our conclusion, therefore, is that the impugned Act is relatable to Entries 234 and 66 in List II of the Seventh Schedule, and its validity is not impaired or affected by Entries 52 and 54 In List I read with Act LXV of 1951 and Act LIII of 1948 respectively,"

As stated earlier also, the impugned cess can be justified as fee as well. The term cess is commonly employed to connote a tax with a purpose or a tax allocated to a particular thing. However, it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax; it may be a fee or fee as well. It is not necessary that the services rendered from out of the fee collected should be directly in proportion with the amount of fee collected. It is equally not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. Availability of indirect benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of the fee collected is enough to uphold the validity of the fee charged. The levy of the impugned cess can equally be upheld by reference to Entry 66 read with Entry 5 of Schedule II.

Royalty is not a tax. The impugned cess by no stretch of imagination can be called a tax on tax. The impugned levy also does not have the effect of increasing the royalty. Simply because the royalty is levied by reference to the quantity of the minerals produced and the impugned cess too is quantified by taking into consideration the same quantity of the mineral produced, the latter does not become royalty, The former is the rent of the land on which the mine is situated or the price of the privilege of winning the minerals from the land parted by the government in favour of the mining lessee. The cess is a levy on mineral rights with impact on the land and quantified by reference to the quantum of minerals produced. The distinction, though fine, yet exists and is perceptible.

In our opinion Ram Dhani Singh v. Collector, Sonbhadra and Ors. - AIR 2001 All. 5 has been correctly decided. We uphold and affirm the same. End Result.

C.A. Nos. 1532-33 of 1993 (Coal Matters) are allowed. The decision by Calcutta High Court [Kesoram Industries Ltd. (Textile Division) v. Coal India Ltd. - AIR 1993 Calcutta 781 is set aside. The writ petitions filed in the High Court of Calcutta shall stand dismissed.

Leave granted in SLP (C) Nos. 3986 of 1993, 11596 and 17549 of 1994.

C.A. Nos. 298, 229 & 297 of 2004 (Ambuja Cement Ltd. etc. and Anr. v. State of West Bengal and Ors.) and C.A. Nos. 3518-3519, 5149-54 of 1992, C.A. No. 2350. of 1993, C.A. No. 7614 of 1994 (Coal Matters) are directed to be dismissed.

W.P.(C) Nos. 262 of, 1997 (Tea matters) W.P.(C) Nos. 515, 641, 642 of 1997, W.P.(C) Nos. 347, 360 of 1999, W.P.(C) Nos. 50, 553 of 2000, W.P.(C) Nos. 207, 288, 389 of 2001 and VV.P.(C) No. 81 of 2003 are directed to be dismissed.

W.P.(C) No. 247 of 1995 and W.P.(C) No. 412 of 1995 (Brick Earth Matters), are directed to be dismissed.

C.A.Nos.5027 of 2000, C.A. Nos. 6643, 6644, 6645, 6646, 6647, 6648, 6649, 6650, 6894 of 2000 and C.A.No. 1077 of 2001 (Minor Mineral Matters) are dismissed. The decision by the Allahabad High Court (Ram Dhani Singh v. Collector, Sonbhadra and Ors. - AIR 2001 Allahabad 5) is affirmed.

S.B. Sinha, J.

INTRODUCTION:

'Coal' and 'Tea' play important roles in the development of economy of the country. Coal has been subject matter of regulatory measures even under the Defence of India Rules. Production, distribution, supply and price of coal were controlled and regulated under the Colliery Control Order, 1945. The said order continued under the Essential Commodities Act, 1955. Under the Colliery Control Order, the Coal Controller was even authorized to allot quotas of coal to the Central Government as well as the State Government although the said procedure is not now in vogue, in view of decontrolling notification issued by the Central Government under the Colliery Control Order, 1945. The quality of coal and the quantity required by all the consumers are regulated by the Coal Controller. Coal was the only mineral which was subjected to nationalization, in terms of Coking Coal Mines (Nationalization) Act, 1972 and Coal Mines (Nationalization) Act, 1973. The coking coal mines mentioned in the 1972 Act and all the coal mines vested in the Central Government under the Nationalization Acts. Coking Coal Mines and Coal Mines except in certain cases belong to the public sector undertakings which are companies subsidiary to Coal India Ltd. Even coal mining leases granted to the lessees stood terminated by reason of Section 4A of Mines and Minerals (Regulation and Development) Act, 1957 in the year 1986. Coal is used as a primary raw-material in many core sectors which are vital for the economy of the country, e.g., power, steel, oil, etc. Fixation of price of coal by the Central Government, regard being had to quality thereof, had all along been subjected to statutory orders. The gradation of coal decedent upon the quality thereof was to be determined by the 'Coal Board' constituted under the Coal Mines Conservation and Safety

Act. Quality of coal may depend not only on the location of the coal mines but also from the particular seams wherefrom it is extracted. Requirement of maintenance of price of coal on an All-India basis had all along been considered to be imperative in the economic and industrial development of the country.

Despite the same, price of coal produced in India is considered to be on the high side as a result whereof it is imported also from other countries despite its availability in abundance. With a view to reduce the price of coal, the Central Government has recently even reduced the rate of custom duty.

Tea is also one of the important commodities having regard to its export potential. An agency of the Central Government even furnishes guarantees to the exporters of tea for export thereof to several countries. [See ABI International Ltd. and Anr. v. Export Credit Guarantee Corporation of India Limited and Ors.] of tea has been the subject matter of international treaties.

Necessity of regulation of price and quality of Coal and Tea having regard to competitive International market, by the Central Government cannot therefore, be minimized.

The constitutional significance involved in these matters is required to be considered on the aforementioned backdrop.

SUBJECT MATTER:

The constitutionality of the Cess Act, 1880, West Bengal Primary Education Act, 1973, West Bengal Rural Employment and Production Act, 1976 as amended by the West Bengal Taxation Laws (Amendment) Act, 1992 whereby and whereunder cess was levied on 'coal', 'tea', 'brick-earth' and 'minor minerals' is in question in this batch of appeals and writ petitions.

The Calcutta High Court by reason of the impugned judgment in coal matters declared the cess imposed on coal to be unconstitutional inter alia having regard to the decisions of this Court in India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors. and Orissa Cement Cement Ltd. etc. v. State of Orissa and Ors. etc. [1991 Supp (1) SCC 430].

166. The Terai Indian Planters' Association and another filed a writ petition under Article 32 of the constitution of India questioning the imposition of cess on 'Tea' in terms of the provisions of the impugned Acts.

Brick Earth Matters:

The Bengal Brickfield Owners' Association filed a writ petition questioning the validity of the impugned Acts inter alia on the ground that the field relating to minor mineral is covered by the 1957 Act and as such the State of West Bengal was denuded of its power to levy any cess on either extraction of brick earth or on despatch of bricks.

168. It has been urged that the operations involved in the manufacturing of bricks as set out in the writ petition are required to be considered by this Court, as being relevant to show that the Cess Act, 1880 is not applicable and that the notices issued demanding payment of cess are arbitrary illegal and liable to be quashed being also in breach of the fundamental rights of the petitioners guaranteed under Articles 14 and 19(1)(g) of the Constitution of India to run their business of manufacture and sale of bricks.

It is averred that the brick earth extracted is mixed with sand, fibre and water and bricks are shaped with the help of moulds; thereafter, the bricks are sun-dried and put in the kiln for baking at the required temperature to make finished marketable bricks. The fuel used is coal. All the operations from quarrying to manufacture of finished marketable bricks are carried out in the brick-field itself and brick earth is not removed from the quarrying field so much so the element of despatch of this minor mineral for said or for any other purposes contemplated by Section 6(1)(b) and defined in Section 4 of the Cess Act, 1880 does not arise.

The writ petition was filed questioning a demand made it the rate of Rs. 12.50 paise per hundred cubit feet of extracted brick earth in relation whereto the Collector. Hooghly in purported exercise of its power under Section 72 of the Cess Act, 1880 directed each brick earth quarrier to file returns in the prescribed form on the average of despatch of brick earth for the previous three years failing which it was threatened that a daily fine of Rs. 50 would be imposed. The said demand was referable to Section 6(1)(b) of the Bengal Cess Act, 1880.

The contention of the respondent is that the cess has been levied for securing the welfare of the people of the State as enshrined in Part IV of the Constitution of India. It is, however, accepted that cess is assessed on annual despatches.

HIGH COURT JUDGMENTS:

Coal Matters:

Before the Division Bench of the Calcutta High Court the sole question which was raised by the parties was as to whether the impugned statutes imposing cess are in pari materia with the statutes which have been held ultra vires by this Court in India Cement (supra) and Orissa Cement (supra). The High Court in its impugned judgment in extenso referred to the provisions of Orissa Acts. Madhya Pradesh Act. Bihar Acts and compared the same with the impugned Acts, noticing that therein also the levy was apparently claimed on the 'land', but were declared unconstitutional.

The findings of this Court in India Cement (supra) and Orissa Cement (supra) were extensively quoted by the High Court. The High Court found that all the three impugned acts provide that Cess shall be assessed or levied on different types of lands. It observed that Section 6 of the Cess Act dealts with three types of immovable properties namely "land", "in respect of all mines, quarries" and "in respect of tramways, railways and other immovable property", whereas the West Bengal Primary Education Act divides the subject matter of the levy into broadly two categories "in respect of Coal Mines and other mines", etc. The Division Bench further observed that the impugned

statutes having made those divisions, each of them provide for assessment of cess in respect of coal mines on the value of annual despatches of coal. While holding that the impugned Acts as ultra vires in terms of decisions of this Court in India Cement (supra) and Orissa Cement (supra), the High Court applied the tests of "real impact" or "substance of the levy" holding that the levies in question after the amendment of 1992 are directly upon coal. The High Court also relied upon the decision of this Court in The Federation of Mining Association of Rajasthan and etc. etc. v. State of Rajasthan and Anr. wherein a three- Judge Bench of this Court in relation to a similar levy rejected a contention that the Rajasthan Act provided for imposition of cess not only with reference to royalty but also on dead rent and, thus, it is possible to read that the State intended to impose the tax by reference to the amount of dead rent (even if it is valid insofar as it purported to make royalty the basis of the tax).

Minor Mineral Matters:

The State of U.P. enacted U.P. Special Area Development Authorities (SADA) Act, 1986. Pursuant to and in furtherance of the power conferred upon it, the State of U.P. framed rules under the said Act known as Shakti Nagar Special Area Development Authority (Cess on Mineral Rights) Rules, 1997. inter alia whereby and whereunder cess was levied on minerals on the ground that the special area development authority had been conferred with the powers of municipal corporation.

The writ petitions filed by Ram Dhani Singh and Ors. questioning imposition of cess in terms of Shakti Nagar Special Area Development Authority (Cess on Mineral Rights) Rules, 1997 was dismissed by the High Court of Allahabad on the ground that the said rules can be upheld in terms of Entry 5 of List II of the Seventh Scheduled of the Constitution of India.

SUBMISSIONS:

State of West Bengal has been represented by Mr. Dwivedi in the coal matter and Mr. Reddy in the tea matter. Their submissions would, therefore, be noticed separately. Writ Petitioners and the Respondents, however, have been represented by a number of counsel.

RE : COAL MATTERS :

Drawing our attention to a comparative chart of the Cess Act, West Bengal Primary Education Act, 1973 and West Bengal Rural Employment and Production Act. 1976 as amended from time to time, Mr. Dwivedi would contend that as by reason of the amendments carried out therein in terms of West Bengal Taxation Laws (Amendment) Act, 1992; remedial measures as regard the deficiencies pointed out by this Court in India Cement(supra) and Orissa Cement (supra) were taken by the State of West Bengal , the High Court committed a manifest error in declaring the same unconstitutional.

The learned counsel would urge that the decisions rendered by this Court in India Cement (supra) and Orissa Cement (supra) would not be applicable in these matters as the levy has been imposed on the value of 'coal' being yield from the land and not on royalty. Contention of Mr. Dwivedi is that the impugned levy would squarely come within the purview of Entry 49, List II of the Seventh Schedule

of the Constitution on the following grounds:

(i) The impugned enactments exclude consideration of royalty from the "value of coal" and therefore royalty did not become part of cess.

(ii) Value of coal dispatched from coal mine is only a basis of measure of cess as it has a direct and definable relation with value of land. Produce of land has always been considered to have direct relevance in determining the value of land.

(iii) That the quantum of levy is dependent upon production of coal being a matter of collection machinery, the same has no relevance to the essence thereof.

(iv) Post amendment levy of cess being on the annual value of coal which is determined on the basis of sale price thereof but excluding royalty and other taxes and charges, the depsatches of coal is not the determinative factor for the purpose of judging the nature of import.

In the alternative it was submitted that cess imposed by reason of the impugned enactments would be sustainable with reference to Entry 50 of List II of Seventh Schedule of the Constitution of India as the same would be tax on mineral rights.

By reason of the 1957 Act, the Parliament. Mr. Dwivedi would contend, is only empowered to make a legislation so as to limit the State of its bower but thereby the Parliament cannot arrogate unto itself the power to impose tax on mineral rights. Royalty according to the learned counsel has wrongly been held to be 'tax' in India Cement.

Submissions of the learned counsel appearing on behalf of the respondents, on the other had, are:

(i) The impugned cess is beyond the legislative competence of the State either in terms of Entry 49 or in terms of Entry 50 of List II of the Seventh, Schedule of the Constitution.

(ii) As by reason of the impugned acts, cess has been levied on the value of coal dispatched (before 1992) and on the value of coal produced (after 1992), they having been levied on minerals and, thus, not either on mineral rights or on land.

(iii) Although mineral is extracted form land but therefore three things are required viz.:

(a) land from which the mineral could be extracted;

(b) Capital for providing machinery, instruments and other requirements

(c) labour Such a tax is neither a tax on land (Entry 49 of List II) nor on mineral rights (Entry 50 of List II) but a hybrid tax on mines plus capital plus labour. It, thus, could only be imposed by the parliament under Entry 97 fo List I.

(iv) In any event, no tax on mineral right can be imposed as the entire field of legislation is occupied by the parliament in view of Sections 9, 9A, 13, 18 and 25 of the Mines and Minerals (Regulations and Development) Act 1957 and the declaration contained in Section 2 therein. Once it is held that the field is covered by an act of Parliament the guidelines for determining the constitutionality of the State Acts not only should be considered with reference to the Parliamentary Act and the rules framed thereunder but also upon taking into account, matters and aspects which can be legitimately brought within the purview of the legislative competence of the State.

(v) As imposition of tax will have a bearing on mineral rights, the parliament in its wisdom has taken over the entire control thereover. Whether royalty is a tax on minerals is not an issue although there is substantial authority for the proposition that the royalty would be a tax. The Parliament can impose tax not only under Entry 54 but also in terms of Entry 97 of List I. When an entry is made subject to another entry the same would mean that out of the scope of the former entry a field of legislation covered by the later entry has been reserved to be dealt by the appropriate legislature.

(vi) Tax on land and buildings can be imposed on land as unit and not on the basis of product thereof. The impugned tax is on activity of land and as all relevant provisions are required to be taken into account and the essential substance thereof is required to be ascertained for determining the true nature of the impugned legislation, and, thus, the standard on which the tax is levied is a relevant consideration for determining the nature thereof.

RE : TEA MATTERS The submission of Mr. V.R. Reddy, learned Senior Counsel are :

(i) Even if it be held that the legislative fields of the State List and the Union List overlap applying the doctrine of pith ad substance and having regard to the history of legislation. Entry 49 must be held to be applicable in these matters.

(ii) The State has a wide discretion in the matter of taxation

(iii) For the purpose of interpreting the respective legislative fields of the Union and State Lists. competence of the State legislative must be seen first so as to anable the Courts to find out as to whether it fails within the residuary power of the Parliament on not.

(iv) The State's power to impose tax must be considered having regard to the economic activities of the State.

The learned counsel would submit that the cases are squarely covered by the decision of this court in Goodricke Group Ltd. v. State of W.B. [1995 Supp (1) SCC 707] which in turn had relied upon Ralla Ram v. Province of East Punjab [AIR 1949 FC 81] and Ajoy Kumar Mukherjee v. Local Board of Barpeta. Mr. Reddy would urge that the principles emerging from the said decisions are that - (i) what is relevant is the use of the land and annual value of the property and not the real value of the property; (ii) the yield/income, actual or potential productivity would be relevant factors; (iii) the subject of a tax is different from the measure thereof.

It was pointed out that the municipal law relating to property tax would also be relatable to Entry 49, List II and this Court in relation thereto has held that actual value may be a relevant consideration.

According to the learned counsel green tea leaf is not a marketable commodity and in that view of the matter, it cannot be said that there exists a competing entry for levy of excise duty thereupon in terms of the provisions of the Central Excise and Salt Act, 1944 and, thus, the State must be held to have the legislative competence to impose the impugned tax. Strong reliance, in this connection, has been placed on Union Carbide India Limited v. Union of India and Ors. and Ralla Ram's case (supra).

The learned counsel would submit that despite Entry 52, List I, this Court has held that thereby the other taxing powers of the State have not been taken away.

The learned counsel appearing on behalf of Writ Petitioners, on the other hand, submitted:

(i) The Parliament in its wisdom has taken over the control of entire tea industry including the manner and extent of cultivation, regulation of production, regulation of sale and export of tea, increasing the consumption in India and elsewhere in tea and propagandas to be made for that purpose as would appear from Sections 10, 13, 15, 25 and 30 thereof.

(ii) Although agriculture is a State subject, the Tea Act having been enacted by the Parliament in terms of Article 253 of the Constitution, the State of West Bengal was denuded of its power to make any legislation whatsoever.

(iii) Having regard to the declaration made in Section 2, of the Tea Act, 1953, the entire tea industry having been taken over in terms of Entry 52 of List I of the Seventh Schedule of the Constitution, the impugned legislation must be held to be bad in law.

(iv) The purported levy is not relatable to Entry 49, List II of the Seventh Schedule of the Constitution of India as in terms thereof the tax is required to be levied directly on the land as a unit.

(v) The structure of the levy clearly indicates that it is directly on production.

(vi) Whereas a small tea estate employing modern cultivation techniques may produce a larger quantity of tea leaves and, thus, are required to pay a higher amount of tax but a larger estate employing primitive methods and thus producing smaller quantity of tea leaves would pay less amount of cess.

(vii) Furthermore, the quality of tea leaves varies from place to place and depend upon the quality and characteristics of the land.

(viii) As by reason of the impugned Act, a uniform cess on quantity of tea leaves without regard to the quality, quantity or productivity of land has been levied, the same is illegal.

(ix) Imposition of tax at a flat rate, it was urged, has nothing to do with the potential productivity and thus the same is ultra vires Article 14 of the Constitution of India.

(x) If measure of the tax is not in tune with reference to the value or potential productivity, the same would be a pointer to the conclusion that the legislative intent was not to impose tax on land but on the production of tea.

BRICK EARTH AND MINOR MINERAL MATTERS:

The learned counsel appearing on behalf of the Brick Earth matters and Minor Mineral matters would contend that although the State has the requisite power to make rules in relation to minor minerals in terms of Section 15 of the 1957 Act, but as the entire field is covered, no cess can be levied by the State Government purported to be in exercise of its power under Entry 5 of List II of the Constitution of India. ISSUE:

The core issue with which this Court is concerned is as to whether the legislative competence of the State to impose cess is traceable to Entries 49 and 50 of List II vis-a-vis Entries 52, 54 read with Entry 97 of List I of the Seventh Schedule of the Constitution of India.

OVERVIEW OF THE STATUTES:

The impugned Acts:

Cess Act, 1880:

Under Section 4(Interpretation Clause) of the Cess Act, 1880 "immovable property" and "land" have been defined as follows:

(i) "immovable property" includes lands and all benefits to arise out of land and things attached to the earth, or permanently fastened to anything which is attached to the earth, but does not include crops of any kind, or houses, shops or other buildings.

"land" means land which is cultivated, uncultivated covered with water and does not include houses or buildings.

"Despatch" in the said Act has been defined as:

"despatch" in relation to a coal mine, means the quantity of coke and coal despatched from the coal mine and that, in relation to other mines and quarries including sand quarries, means the quantity of minerals/ sand despatched from such mine or quarry."

Section 5 of the Cess Act, 1880 inter alia imposes road cess and public works cess on all immovable properties which in terms of Section 6 are required to be assessed in respect of mines and quarries on annual despatches subject to maximum of 50 paise on each tonne of coal and in the case of coke,

the same shall be counted as one and a quarter tonne of coal. West Bengal primary Education Act, 1973:

Under Section 78(2)(b) of the West Bengal Primary Education Act, 1973, cess is imposed at five per centum of the value of the coal on the despatches therefrom. While determining the value of such coal, any sum separately charged as tax, cess, duty, fee or royalty is to be excluded but in case of despatches other than sale which may be for the purpose of its own consumption or given to the workmen the cess shall be determined on the prices chargeable by the owner of the coal mine for such coal as if they were despatched for sale thereof. In case, however, more than one price is charged for the same variety of coal, the maximum price chargeable for that variety shall be the basis of valuation.

West Bengal Rural Employment and Production Act, 1976:

Under Section 4(2)(b) of the West Bengal Rural Employment and Production Act, 1976, 35 per cent of cess is levied on each tonne of coal on the despatches therefrom. The other provisions are, however, same as in Education Act.

Amendments:

After the decision of this Court in India Cement (supra), the State of West Bengal enacted West Bengal Taxation Laws (Amendment) Act, 1992 which came into force with effect from 1.4.1992. The relevant amendments made thereunder are:

"2. In the West Bengal Primary Education Act, 1973, (1) in Section 78 for Sub-section (2), the following Sub-section shall be substituted (2) The education cess shall be levied annually

(a) in respect of land, except when a cess is leviable and payable under Clause (b) or Clause (c) of Sub-section (2A) at the rate of ten paise on each rupee of annual value thereof as assessed under the Cess Act, 1880;

(b) in respect of a coal-bearing land, at the rate of five per centum of the annual value of the coal-bearing land as defined in Clause (1) of Section 2 of the West Bengal Rural Employment and Production Act, 1976;

(c) in respect of a mineral-bearing land (other than coal-bearing land) or quarry, at the rate of one rupee on each tonne of minerals (other than coal) or materials despatched within the meaning of Clause (1b) of Section 2 of the West Bengal Rural Employment and Production Act, 1976, from such mineral bearing land or quarry;

Provided that when in the coal-bearing land referred to in Clause (b) there is no production of coal for more than two consecutive years, such land shall be liable for levy of cess in respect of any year immediately succeeding the said two consecutive years in accordance with Clause (a): Explanation. For the purposes of this chapter, 'coal-bearing land' shall have the same meaning as in Clause (1a) of

Section 2 of the West Bengal Rural Employment and Production Act, 1976. "

Similar provisions were inserted by reason of Section 3 of West Bengal Rural Employment and Production Act and as such is not being reproduced once over again.

However, it may be noticed that by reason of the said amendment, cess has been imposed even on a mine when there has been no production of coal for more than two consecutive yeas and in that event the coal bearing land shall be subject to payment of cess for any year succeeding the said two consecutive years. Similar provision has been made in Section 4 of the West Bengal Rural Development and Production Act also.

Various amendments made in the said two acts will appear from the following chart:

Changes in unit and rate of cess under the West Bengal Primary Education Act, 1973 are as under :

Statute Coat Tea Act XLIII Of 1973* p. 1 at 2 S. 78(2)(b): Not exceeding Rs. 0,30 per tonne on annual dispatches of coal No separate section S. 78(2)(a); Not exceeding Rs. 0.10 on annual value of the land ACT IX of 1981 p.6 S. 6: Rs. 0.50 raised to Re. 1 No change Act V Of 1982 p.9 S, 5: Re. 1 raised to Rs. 2 Word "annual" deleted No change Act XV of 1983 p. 14-15 S, 6: Rate changed to 2% of the value of coal dispatched. (Value of coal defined in the Explanation) No change Act IV of 1984 p. 16-17 S. 5(l)(b)(iii): 2% raised to 3% S. 5(l)(b): Tec estates taken out of the ambit of S. 78(2)(a). New S.78(2)(aa): Not exceeding Rs. 6 per kg of tea on despatches from fee tea estate Act XX of 1989** p. 30 at 31 No change S. 2: S. 78(2)(aa) omitted and replaced by S. 78(2A) S. 78 (2A): Cess at the rate of Rs. 0.04 per kg of green tea leaves produced (Effective from 14.4.1984 and validation clause also passed.) Act If of 1992 p. 37 at 38 S. 2(1): S. 78(2) replaced by a. new section. New S. 78(2)(b): cess on coal-bearing lands @ 5% of the annual value of the land, as, defined in S. 2(1) of Act XI V of 1976 (on the basis of value of coal produced in the preceding two years). No change Act X of 19% D. 48 S. 5: 5% raised to 7% No change Ad VIII of 1998 p. 49 S. 2: 7% reduced to 5% No change *West Bengal Primary Education Act 1973 ** West Bengal Taxation Laws (Second Amendment) Act 1989 Changes in unit and rate of cess under the West Bengal Rural Employment and Production Act, 1976 Statute Coal Tea Act XIV of 1976* p. 3-4 S.4(2)(b): Not exceeding Rs. 0.50 per tonne on annual despatches of coal No separate section. S: 4(2)(a): Not exceeding Rs. 0.06 on development value of the land (Defined in S. 2(l) as five times the annual value.) Act XIV of 1978 p.5 S.5: Rs. 0.50 raised to Rs. 2.50 No change Act IX of 1981 p. 6-7 S.7(b)(iii): Rs. 2.50 raised to Rs. 5 S. 7(b): Tea estates taken out ofthe ambit of S. 4(2)(a). New S. -4(2)(sic): Not exceeding Rs. 6 per kg of tea en despatches item the tea estate. (Proviso that auction sales may be excluded.) Act V of 1982 p. 9 at 11 S. 7(l)(a)(ii): Rs. 5 raised to Rs. 7.50, Word "annual" deleted S. 7(I)(a)(i): Proviso deleted Act VIII of 1983 p. 13 S. 8: Rs. 7.50 raised to Rs. 15 No change Act XV of 1983 p. 14 at 15 S. 7(i): Rate changed to 15% of the value of coal despatched. (Value of coal defined in the Explanation) No change Act IV of 1984 p. 16 at 19 S. 7: 15% raised to 17% No change Act I of 1986 p. 20 at 24 S. 8 (1):17% raised to not exceeding 25%" No Change Act III of 1988 p. 29 S. 6: 25% raised to 35% No change Act XX of 1989** p. 30 at 33-34 No change S, 3; S. 4(2)(aa) omitted and replaced by S. 4(2A). S. 4(2A): Cess at the rate of Rs. 0. 12 per kg of green, tea leaves produced (Effective from 1.4.1981 and validation clause also passed) Act 11 of 1992 p. 37 at 42-43 S. 3(2): S.4(2) replaced by a newsection. New S, 4(2)(b): Cess on

coal-bearing lands @ 35% of the annual value of the land, as defined in S.2(I) of the Act. (Inserted by S. 3(I)(a) of this Act

- annual value defined on the basis of value of coal produced in the preceding two years No change Act XVI of 1994 p. 47 No change S, 6: Rs. 0.12 reduced to Rs. 0.08 Act X of 1996 p. 48 S. 6:35% raised to 38% No change Act VIII of 1998 p. 49-50 S. 3: 38% reduced to 20% No change *West Bengal Rural Employment and. Production Act. 1976 * * West Bengal Taxation Laws (Second Amendment) Act 1989 The aforementioned charts go to show that in relation to Education Cess, variation has been made from 0.50 p. per M.T. to 7% of the value of coal and in relation to Rural Education, the rate of cess varied from 0.50 p. to 38% of the value of coal.

So far as tea is concerned, the following amendment has been made in the Act:

"(2A) The education cess shall be levied annually on a tea estate at the rate of four paise for each kilogram of green tea leaves produced in such tea estate.

Explanation to Section 2A provides that for the purpose of the said sub- section, Section 78B and Section 78C -

(i) 'green tea leaves' shall mean the plucked and unprocessed green leaves of the plant Camelia Sinensis (L) O. Kuntze;

(ii) 'tea estate' shall mean any land used or intended to be used for growing plant Camelia Sinensis (L) O. Kuntze, and producing green tea leaves from such plant, and shall include land comprised in a factory or workshop for producing any variety of the product commercially known as 'tea' made from the leaves of such plant and for housing the persons employed in the tea estate and other lands for purposes ancillary to the growing of such plant and producing green tea leaves from such plant."

U.P. Special Area Development Authorities Act, 1986: Section 35 of the Act provides as under:

"35. Cess on mineral rights:

(1) Subject to any limitations imposed by Parliament by law relating to mineral development, the Authority may impose a cess on mineral rights at such rate as may be prescribed.

(2) Any Cess imposed under this section shall be subject to confirmation by the State Government and shall be leviable with effect from such date as may be appointed by the State Government in this behalf."

In exercise of the power conferred by Section 35 of the Act, the Governor made the Shakti Nagar Special Area Development Authority (Cess on Mineral Rights) Rules, 1997. Rule 2(b) and Rule 3(1) and (2) thereof read as under:

"2. In these rules, unless there is anything repugnant in the subject or context.

(a) xxx xxx xxx

(b) "Mineral Rights" means rights conferred on a lessee under a mining lease granted or renewed for mining operations in relation to Minerals (providing operation for raising, winning or extracting coal) as defined in the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957).

"3.(1) The. Authority may, subject to Sub-rules (2) and (3) impose a cess on mineral rights on such minerals and minor minerals and at such rates as specified below:

Mineral/ Minor Mineral Minimum Rate Maximum Rate (1) Cess on Coal Rs. 5.00 per ton Rs. 10.00 perton (2) Cess on Stone, Coarse Sind/ Sand Rs. 2.00 per cubic metre Rs. 5.00 per cubic metre (2) The rates shall not be less, than the minimum rates or more than the maximum rates specified in Sub-rule (1) and shall be determined by the Authority by a special resolution which shall, be subject to confirmation by the State Government."

M.M.R.D. Act, 1957 - Purport and object:

While enacting the 1957 Act, it was stated:

"Amending Act 15 of 1958:-In view of its importance as basic fuel and the position it occupies in the country's economy, coal has always been treated differently from other minerals. It is in recognition of this that no rules have been framed so far under Section 7 of the Mines and Minerals (Regulation and Development) Act, 1948, in regard to modification of the terms and conditions of mining leases for coal granted before the commencement of that Act, though other minerals have been covered.

2. The Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957), which replaces the Act of 1948, however, specifically extends the rate of royalty prescribed in the Second Schedule to mining leases granted before the 25th October, 1949, in respect of coal also and makes it obligatory for the other terms and conditions of such leases to be brought into conformity with the provisions of the Act and the rules made under Sections 13 and 18. It is considered that these changes will have numerous undesirable consequences. The area covered by these mining leases are principally in West Bengal and Bihar ,and they account for as much as 80 per cent, of the total coal production in the country. The royalties paid on this coal vary over a wide range but are generally much below the rate per ton prescribed in the Second Schedule. A sudden and uniform increase of these royalties is likely to have an unsettling effect on the industry and may retard the programme of coal production under the Second Five Year Plan. The same adverse effect would be felt by a sudden modification of the other terms and conditions.

3. The object of the present Bill is accordingly to exempt mining leases for coal granted before the 25th October, 1949 from the operation of Sub- section (1) of Section 9 and Sub-section (1) of Section 16 of the Act, with powers to Government to extend these provisions to such leases at a future date subject to such exceptions and modifications as may be considered necessary. - See. Gaz. Of India, 28-5-1958, Pt. II, Section 2, Ext., p.

502."

The 1957 Act was enacted for regulation of mines and development of minerals under the control of Union. Section 2 provides for the requisite declaration which is as under:

"Declaration as to expediency of control by the Union:- It is hereby declared that it is expedient in" the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided. " In the said Act, "minor minerals" is defined as:

"minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;"

In terms of Section 4, mining operations either under a prospecting licence or mining lease is to be carried out only under a licence or lease to be granted in the manner prescribed by the rules made under Sections 13 and 15 thereof as the case may be. Section 9 of the said Act provides for royalty. Section 9A provides for dead rent. Section 13 confers power on Central Government to make rules in respect of major minerals. Rules may provide for fixing and collection of rent, fees, charges, etc. for prospecting licenses or Mining Leases.

Section 15 of the said Act provides for rule making power by the State in relation to the minor minerals: pursuant to or in furtherance whereof the State Government framed Minor Mineral Concession Rules for regulating grant of quarry lease, mining lease and other mineral concessions in respect of minerals and purposes connected therewith. Section 15(1-A)(g) reads thus:

"1-A. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable; "

Sections 17 and 17A grants special power to the Central Government to undertake prospecting and mining operation in certain cases and reservation of area for the purpose of conservation. Section 18 of the Act imposes a statutory duty upon the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining Operations and for such purposes the Central Government may, by notification in the Official Gazette, make such, rules, as it thinks fit. Sub-section (2) of Section 18 provides illustrations of some of the matters which are to be governed by such rules. Section 21 provides for penalties. The 1957 Act is a complete code providing for regulation of mine and mineral development including the power to levy tax. Section 25 deals with recovery of rent, royalty, tax, fee or other sums due to the Government under the Act or the Rules framed thereunder which shall be a first charge on the assets and recovery as an arrear of land revenue and, thus, by necessary

implication confers power to impose tax on the mineral. TEA ACT, 1953 The Tea Act was enacted by the Parliament indisputably in exercise of its legislative power contained in Entry 52, List I of the Seventh Schedule of the Constitution of India. A requisite declaration to that effect also finds place in Section 2 of the Act. The preamble of the Tea Act clearly points out that the same was enacted to provide for the control by the Union of the tea industry including the control, in pursuance of the International Agreement now in force, of the cultivation of tea in, and of the export of tea from, India and for the purpose of establishing a Tea Board and levy a duty of excise on tea produced in India.

The Statement of Objects and Reasons, the report of the Select Committee as also the various amendments made therein from time to time, particularly Amending Act 21 of 1967, Amending Act 22 of 1970, Amending Act 75 of 1976, Amending Act 38 of 1983 and Amending Act 24 of 1986 leave no manner of doubt that the tea industry had occupied a very important position in the country and in that view of the matter alone the Union Government took the industry under its control.

'Cess' has been defined in Section 3(c) to mean the duty of excise imposed by Section 25.

'Owner' has been defined in Section 3(k) in the following terms : "Owner" -

(i) with reference to a tea estate or garden or a sub-division thereof the possession of which has been transferred by lease, mortgage or otherwise, means the transferee so long as his right to possession subsists; and

(ii) with reference to a tea estate or a garden or a sub-division for which an agent is employed, means the agent if and in so far as, he has been duly authorised by the owner in that behalf; "

We may further note the definition of 'tea' as contained in Section 3(n) thereof which is in the following terms :

""tea" means, the plant Camellia Sinensis (L) O. Kuntze as well as all varieties of the product known commercially as tea made from the leaves of the plant Camellia Sinensis (L) O.

Kuntze including green tea;";

is in pari materia with the State Act.

Chapter II of the Act provides for constitution of the Tea Board. Section 10 provides for the duties and functions of the Board which in no uncertain terms states that it shall be the duty of the Board to promote by such measures, as it thinks fit, the development under the control of the Central Government of the tea industry. Sub-section (2)(a) of Section 10 unlike other Act provides for regulation of production and extent of cultivation of tea. The Board has, inter alia, a duty to regulate the sale and export of tea; increasing the consumption in India and elsewhere of tea and carrying on propaganda for that purpose; and improving the marketing of tea in India and elsewhere. The Board in terms of Sub-section (3) of Section 10 is enjoined with a duty to act in accordance with and

subject to such rules as may be made by the Central Government. Chapter III provides for control over the extension of tea cultivation. Section 12 prohibits planting of tea on any land unless permission therefore is granted by the Board. Section 13 provides for the limitations to the extension of tea cultivation. Even the total area of land in respect of which such permission may be granted shall be such as may be determined by the Board, as is explicit from Sub-section (2) of Section 13 in terms whereof information in relation to such matters are to be notified. Section 14 provides for the manner in which the applications for grant of permission to plant tea are to be dealt with. Any decision taken by the Board in terms of Sub-section (3) of Section 14 on such applications is not to be called in question by any Court. Section 15, however, makes an exception for grant of permission in special circumstances as specified therein. Section 16 empowers the owner of a tea estate to establish tea nurseries but even for that purpose all areas of land utilized therefore shall be excluded when computing for the purpose of Section 13 the total area of land in respect of which the permissions referred to in Section 12 may be granted. Chapter IIIA which was inserted by Act No. 75 of. 1976 provides for management or control of tea undertakings or tea units by the Central Government in certain circumstances specified therefore. Management of such tea undertakings or tea units can be taken over in the event any exigency/situation as referred to therein comes into being. The definition of 'tea unit' as contained, in Chapter IIIA is also a pointer to the fact that a tea unit would mean a tea estate or garden. Chapter IV provides for control over the export of tea and tea seed. Chapter V of the said Act deals with finance, accounts and audit. Section 25 of the Act has undergone a substantial amendment by reason of Amending Act 24 of 1986, the Statement of Objects and Reasons whereof reads thus :

"Amending Act 24 of 1986: Under Section 25 of the Tea Act, 1953 (29 of 1953), the Central Government is empowered to levy and collect as a cess, a duty of excise on all tea produced in India at the rate of four paise per kilogram. The Central Government is, however, empowered to fix a higher rate of cess not exceeding 8.8 paise per kilogram. The present rate of cess of eight paise per kilogram was made effective from August, 1978. Although, this rate is almost at the maximum rate allowed under the Act, the amount of cess collected has become insufficient to meet the expenditure of the various developmental and other activities of the Tea Board. The gap between the proceeds from the cess and the actual expenditure of the Tea Board is likely to when further in view of the higher level of expenditure envisaged in the Seventh Plan. The ceiling of 8.8 paise per kilogram, therefore, needs to be revised. It is, accordingly, proposed to amend Section 25 of the Act for providing higher ceiling of levy of cess at a rate not exceeding fifty paise per kilogram as the Central Government may, from time to time, fix by notification. It is also proposed to empower the Central Government to empower the Central different varieties and grades of tea having regard to the geographical, climatic and other circumstances relating to the production of the different varieties and grades of tea. "

The said provision, therefore, enables the Central Government to provide for imposition of cess on tea produced in India. Sub-section (1) of Section 25 provides that "there shall be levied and collected as a cess for the purposes of this Act a duty of excise on all tea produced in India at the rate of four paise per kilogram".

Section 30 of the Act occurring in Chapter VI of the Act specifies the area of control taken over by the Central Government. It reads thus :- "30. Power to control price and distribution of tea or tea waste; (1) The Central Government may, by order notified in the Official Gazette, fix in respect of tea of any description specified therein -

(a) the maximum price or the minimum price or the maximum and minimum prices which may be charged by a grower of tea, manufacturer or dealer, wholesale or retail, whether for the Indian market or for export;

(b) the maximum quantity which may in one transaction be sold to any person.

(2) Any such order may for reasons to be specified therein -

(a) fix prices for such tea differently in different localities or for different classes of dealers, or for growers of tea or manufacturers;

(b) instead of specifying the price or prices to be charged, direct that price or prices shall be computed in such manner and by reference to such matters as may be provided by the order.

(3) The Central Government may, by general or special order -

(a) prohibit the disposal of tea or tea waste except in such circumstances and under such conditions as may be specified in the order;

(b) direct any person growing, manufacturing or holding in stock tea or tea waste to sell the whole or a part of such tea or tea waste so grown or manufactured during any specified period, or to sell the whole or a part of the tea or tea waste so held in stock, to such person or class of persons and in such circumstances as may be specified in the order;

(c) regulate by licences, permits or otherwise the production, storage, transport or distribution of tea or tea waste.

(4) Where in pursuance of any Order made with reference to Clause (b) of Sub-section (3), any person sells the whole or a part of any quantity of tea or tea waste, there shall be paid to him as price therefore -

(a) where the price can be fixed by agreement consistently with the order, if any, relating to the fixation of price issued under Sub-section (i), the price so agreed upon;

(b) where no such agreement can be reached, the price calculated with reference to any such order as is referred to in Clause (a);

(c) where neither Clause (a) nor Clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale. (5) Without prejudice to the generality of the power conferred by

Sub- sections (1) and (3), any order made thereunder may provide -

(a) for requiring persons engaged in the production, supply or distribution of, or trade and commerce in, tea or tea waste to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto as may be specified in the order;

(b) for such other matters, including in particular the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorized to make such search, of tea or tea waste in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licences, permits or other documents and the charging of fees " therefore."

The Central Government in exercise of its power conferred upon it under Section 30 of the Tea Act made an order known as Tea (Marketing) Control Order 2003 in terms whereof different types of tea had been brought within the interpretation clause. Clause 2(q) of the Order defines "Bought leaf tea factory" as follows:

"2(q) "Bought leaf tea factory" means a tea factory which sources not less than two-thirds of its tea leaf requirement from other tea growers during any calendar year for the purpose of manufacture of tea".

FEDERALISM:

Federalism is one of the basic pillars of the Indian Constitution. The federal distribution of powers are one of its unique features. Having regard to Articles 245, 248, 250, 256, 257, 356 and Entry 97 in list I of the VII Schedule of the Constitution, it is not possible to say that India is not a subscriber to federalism but although having unique federal character it can, be said to be quasi-federal or hybrid federal State. Constitutional courts have interpreted that India has a federal polity. Each State has independent constitutional existence assigned with important political role.

Having regard to the aforementioned principles in mind, the Center- State relations as regards the distribution of legislative power must be viewed.

We may notice that Livingston in his treatise 'Federation and Constitutional Change, 1956, pp.6-7" has observed that federation is a more functional than institutional concept and it is wrong to suppose that there are certain inflexible features in the absence of which a political system cannot be federal stating:

"Such a set of criteria ignores the fundamental fact that institutions are not the same things in different social and cultural environments.... No two societies are the same and each will require very different instrumentalities in accordance with the complex of psychological and sociological determinants that is peculiar to it."

It is not in dispute that the founding fathers intended to create strong Centre having regard to the historic background. Such a tilt in favour of the Centre as regard distribution of legislative field was felt to be a matter of necessity and that is precisely the reason why more important heads of legislation are in the Union List. Even the residuary power has been conferred upon the Parliament. The amendments made in the Constitution whereby and whereunder a few entries in List II which were either omitted or transferred to other lists also is a pointer to the said fact.

In Florida Lime and Avocado Growers v. Charles Paul [373 US 132 : 10 Law. Ed. 2d 248], it is stated:

"We have, then, a case where the federal regulatory scheme is comprehensive, pervasive, and without a hiatus which the state regulations could fill. Both the subject matter and the statute call for uniformity. The conflict is substantial - at least six out of every 100 federally certified avocados are barred for failure to pass the California test - and it is located in a central portion of the federal scheme. The effect of the conflict is to disrupt and burden the flow of commerce and the sale of Florida avocados in distant markets, contrary to the congressional policy underlying the Act. The State may have a legitimate economic interest in the subject matter, but it is adequately served by the federal regulations and this interest would be but slightly impaired, if at all, by the suppression of 792."

As would be discussed hereinafter in detail, the same principle would apply in the instant case.

Latham, C.J. in The State of South Australia and Anr. v. The Commonwealth and Anr., [(1942) 65 C.L.R. 373] explained the legalistic feature stating:

"The problem for the Court is a legal problem which is unknown in countries with a unitary form of government and a supreme legislature. It arises only when legislative powers of a law-making agency are limited. This is the case in Australia..If either the Commonwealth Parliament or a State Parliament attempts to make a law which is not within its powers, the attempt fails, because the alleged law is unauthorized, and is not a law at all... The law is not valid until a court pronounces against it...If it is beyond power. It is invalid ab initio. Thus the controversy before the Court is a legal controversy, not a political controversy...It has been argued that the Acts now in question discriminate, in breach of Section 51(ii) of the Constitution, between States. The Court must consider and deal with such a legal contention. But the Court is not authorised to consider whether the Acts are fair and just as between States...These are arguments to be used in Parliament and before the people. They raise questions of policy which it is not for the Court to determine or even to consider."

Importance of federalisam has recently been noticed by us in State of Andhra Pradesh v. K. Purushotham Reddy [JT 2003 (3) SC 15] which has been followed in Govt. of A.P. v. Medwin Educational Society and Ors., albeit in a different context. It was held when the State acts in obedience of a legislative policy formulated under the Parliamentary Acts in relation to Higher Education, the State action would be intra vires.

Durga Das Basu in his celebrated work "Comparative Federalism" at pp. 175-176 states:

"The strong Central bias has indeed been a boon to keep India together when we find the separatist forces of communalism, linguism and scramble for power playing havoc notwithstanding all the devices of Central control, even after more than three decades of the working of the Constitution. It also shows that the States are not really functioning as agents of the Union Government or under the directions of the latter, for then, events like those in Assam (over the language problem) or in Punjab (pp. 115ff., ante) could not have taken place at all. But, by reason of such centralizing trends, federalism cannot be said to be dead in India. A radical change in the background has taken place since 1967. So long as the Union and all the States in India were under the rule of one-Party under the strong leadership of a towering personality such as Pandit Jawaharlal or Mrs. Gandhi, there, could hardly arise any tussle between the Union and the States which could not be Settled by the Party leadership at Delhi, and, thus, Indian federalism came to work almost as a Unitary system. But in 1967, different parties came to power in a number of States, so that they would naturally refuse to act as dictated by the Party in power at Delhi.

The frequent resort to the extraordinary power under Article 356 to keep recalcitrant Stats politics under Union control, the abuse of Governor's powers in some cases, and the like, have accelerated the forces of separatism.

In such a situation, which is prevailing till the time of this Writing in 1986, the question of 'State powers under the provisions of the existing Constitution, as well as the question of their revision by amendment of the Constitution, are bound to raise their head and agitations over these questions have led to the constitution of the Sarkaria Commission (1983) to examine and revise, if necessary, the 'Centre State relations' under the Constitution."

In the said treatise at page 178 quoting Dicey, Law of the Constitution, 10th Ed. P. 164, the learned author states: "There are, according to Dicey, three, essential legal features in a federal Constitution, namely,

(a) Supremacy of a written Constitution;

(b) Distribution of powers amongst the various organs of the federation and of the regional units of the federation, by the provisions of that Constitution; and

(c) Judicial review or enforcement of that supreme Constitution as law. If these legal features are present in the Indian Constitution., it would be immaterial to a lawyer whether academicians would classify it as 'quasi- judicial' or 'a unitary constitution with subsidiary federal features,' or the like."

In his book, Central Power in the Australian Commonwealth, Cassell, London, Sir Robert Menzies states:

"My central purpose has been to demonstrate a great truth about the study of a federal Constitution. That truth is that although it is a sound rule to go back to the language of the Constitution - melius est petere fonts quam sectare riulos - it is a mistake to think that a Constitution is something rigid and inflexible, to be interpreted like any ordinary statute, to have a meaning fixed for all time. I have

defended leglism as something inherent in federalism. But it is not inconsistent with the legalistic approach to recognize that a written Constitution is an expressed scheme of government designed to give a basic structure in a changing world; not designed to inhibit growth in a growing world, nor to make the contemporary world subject to the political, social or economic ideas of a bygone age. "

The doctrine of federalism in the Indian context would mean proper and effective interpretation of the Constitution in respect whereof political or economic views have no role to play. Fields of legislation carved out under Chapter I of Part XI clearly spells out that in more important matters and the Parliament will have greater control thereover.

Tilt in favour of the Centre is required to be construed having regard to the importance of the subject matter of Parliamentary legislation and the impact and practical effect of the in road of the State Laws entrenching upon the legislative field occupied by the Parliament.

It would, therefore, not be correct for the superior courts to advocate the theory that while interpreting the Constitution, courts should lean in favour of the State. Federal character of the Union of States in India do not support the said theory.

LEGISLATIVE FIELD The principles required to be deduced as regard field of legislation, may not be much in dispute. The question, however, is that of its application.

Before analyzing the relevant provisions, we may have an overview of the constitutional scheme in this behalf. Articles 245 and 246 of the Constitution of India read with Seventh Schedule and Legislative Lists contained therein prescribe the extent of legislative competence of Parliament and State Legislatures. Parliament has exclusive power to make laws with respect of any of the matter enumerated in List I in the Seventh Schedule. Similarly, State Legislatures have exclusive power to make laws in respect of any of the matters enumerated in List II. Parliament and State Legislatures both have legislative power to make laws with respect to any matter enumerated in List III, the Concurrent List.

The various entries in the three Lists are fields of legislation. They are designed to define and delimit the respective areas of legislative competence of the Union and State Legislatures. Since legislative subjects cannot always be divided into water tight compartments; some overlappings between List I, II and III of the Seventh Schedule is inevitable. Hence, though the State Legislature has exclusive power with respect to the subjects specified in List II, some of the Entries in List II specifically make the State power 'subject to' any law made by Parliament under the specified Entry in List I.

Article 245 of the Constitution of India empowers the Parliament not only to make laws for the whole or any part of the territory of India but also indicate that no law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. Clause (1) of Article 246 of the Constitution of India confers exclusive legislative power upon the Parliament with respect to any of the matters enumerated in List I in the Seventh Schedule whereas in terms of Clause (2) thereof, the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule, subject of course to the legislative

competence of the Parliament as contained in Clause (1) but notwithstanding anything contained in Clause (3) thereof. The power of the State Legislature in terms of Clause (3) of Article 246 is subject to Clauses (1) and (2) in relation to the matters enumerated in List II in the Seventh Schedule.

In Union and State Relations under the Indian Constitution by M.C. Setalvad, upon noticing the expressions used in different clauses of Article 246, it is stated:

"In the United States and in Canada, judicial decisions have established that, where a federal law or a dominion law conflicts with a State law on the same subject, the relevant federal or dominion law must prevail. The same position has been achieved by an express provision in Section 109 of the Commonwealth of Australia Act. In the Indian Constitution, this is sought to be achieved in part by the language of Article 246. The purpose of the provisions which we have set out in Article 246(1), (2) and (3), is clearly to carve out not only two exclusive legislative fields for the Union and the States and a further field in which both the general and the regional, governments can operate, but also to provide by the language used in each of three clauses of the Article that the legislative power of the Union in List I is predominant. That power is exercisable "notwithstanding anything in Clauses (2) and (3)" of Article 246. The concurrent Union power of legislation conferred by Clause (2) of Article 246 is exercisable "notwithstanding anything in Clause (3)" which deals with the exclusive legislative power of the State. But the State's concurrent legislative power is "subject to Clause (1)", which deals with the exclusive Union power of legislation. The State's legislative power in the field carved out for it by List II is again exercisable "subject to Clauses (1) and (2)", which deal with the Union power and the Concurrent power, the first vested exclusively in the Union and the second in both the Union and the State."

[Emphasis supplied] The Constitution makers found the need for power sharing devices between the Central and the State having regard to the imperatives of the State's security and stability and, thus, propelled the thrust towards centralisation by using non obstante clause under Article 246 so as to see that the federal supremacy is achieved.

A perusal of the provisions of entries in List II would show that there are 17 entries in List II (Entries 1, 2, 12, 13, 17, 22, 23, 24, 26, 27, 32, 33, 37, 50, 54, 57 & 64) which are one way or the other 'subject to' either provisions of Entries in List I and/ or List III or subject to laws made by Parliament. There are four models of entries to that effect.

(i) Eight Entries (2, 13, 17, 22, 23, 24, 33, 54) out of the aforesaid if entries have been made 'subject to' the provisions of Entries in List I.

(ii) Three Entries (26, 27, 57) have been made subject to provisions of Entries in List III.

(iii) Four Entries (1, 12, 32, 63) out of the aforesaid 17 entries have been given power to the State Legislatures to make laws on subjects 'other than' those specified in List I and/ or dealt with by law made by Parliament.

(iv) Only two Entries (37&50) have been made subject to the provisions of any law made by Parliament.

Article 248 of the Constitution of India confers power upon the Parliament to make any law with respect to any matter not enumerated in the Concurrent List or the State List.

Article 253 of the Constitution of India reads thus :- "Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. "

It can be seen that Article 253 contains non-obstante clause. Article 253, thus, operates notwithstanding anything contained in Article 245 and Article 246. Article 246 confers power on the Parliament to enact laws with respect to matters enumerated in List I of the Seventy Schedule to the Constitution. Entries 10 to 21 of List I of the Seventh Schedule pertain to International Law. In making any law "under any of these entries, parliament is required to keep Article 51 in mind.

Article 253 of Constitution provides that while giving effect to an international treaty, the Parliament assumes the role of the State Legislature and once the same is done the power of the State is denuded.

Notwithstanding the fact that great care with which the various entries in the three lists have been framed: on some rare occasions it may be found that one or the other field is not covered by these entries. The makers of our Constitution have, in such a case, taken care by conferring power to legislate on such residuary subjects upon the Union Parliament including taxation by reason of Article 248 of the Constitution.

We may notice that in the Government of India Act, 1935 no provision of the nature of Entry 97 in List I existed. In terms of Section 104 thereof the Governor General could empower either the Dominion Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to the Act, including a law imposing a tax not mentioned in any such list and the executive, authority of the Dominion or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor General otherwise directs. In Constitution, of India, however, such a residuary power has expressly been conferred on the Parliament.

Once it is held that the State lacks legislative competence for imposition of tax on any of the subject, indisputably the Parliament alone will have legislative competence therefore.

CASE LAWS RE: LEGISLATIVE COMPETENCE :

Observation made by this Court in S.R. Choudhuri v. State of Punjab, in this regard/ is apposite:

"Constitutional provisions are required to be understood and interpreted with an object-oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve."

In Attorney General for India v. Amratlal Prajivandas, the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) made by Parliament was challenged inter alia as lacking legislative competence. The Constitution Bench of nine Judges relying on Union of India v. Shri Harbhajan Singh Dhillon observed as under: "Be that as it may, it is not necessary to pursue this line of reasoning since we are in total agreement with the approach evolved in Union of India v H.S. Dhillon - a decision by a Constitution bench of seven Judges. The test evolved in the said decision is this in short: Where the legislative competence of Parliament to enact a particular statute is questioned, one must look at the several entries in List II to find out (applying the well known principles in this behalf) whether the sold statute is relatuble to any of those(sic) and List III or by virtue of Article 248 read with Entry 97 of List I."

We may at this juncture also notice the decision of this Court in Naga People's Movement of Human Rights v. Union of India, [AIR 1998 SC 431] which states:

"While examining the legislative competence of Parliament to make a law what is required to be seen is whether the 'subject-matter falls in the State List which Parliament cannot enter. If the law does not fall in the State List, Parliament would have legislative competence to pass the law by virtus of the residuary powers under Article 248 read with Entry 97 of the Union List and it would not be necessary to go into the question whether it falls under any entry in the Union List or the Concurrent List. [See Union of India v. H.S. Dhillon, S.P. Mittal v. Union of India, and Kartar Singh v. State of Punjab. What is, therefore, required to be examined is whether the subject-matter of the Central Act falls in any of the entries in the State List. "

Yet again in Synthetic & Chemicals Ltd. v. State of U.P., it has been held:

"... It has also to be borne in mind that where division of powers and jurisdiction in a federal Constitution is the scheme, it is desirable to read the Constitution in harmonious way."

In State of A.P. v. K. Purushotham Reddy and Ors. reported in JT 2003 (3) SC 15, it was held:

"The conflict in legislative competence of the Parliament and the State Legislatures having regard to Article 246 of the Constitution of India must be viewed in the light of the decisions of this Court which in no uncertain terms state that each Entry has to be interpreted in a broad manner. Both the parliamentary legislation as also, the State legislation must be considered in such a manner so as to uphold both of them and only in a case where it is found that both cannot co-exist, the State Act may be declared ultra vires..."

In India Cement Ltd. (surpa), it is stated :

"...It is well settled that widest amplitude should be given to the language of these entries, but some of these entries in different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. Then, it is the duty of the court to find out its true intent and purpose and to examine a particular legislation in its pith and substance to determine whether it fits in one or the other of the lists."

In Bharat Coking Coal v. State of Bihar (1990) 4 SCC 557, it has been held:

"...No doubt under Entry 23 of List II, the State legislature has power to make law but that power is subject to Entry 54 of List I with respect to the regulation and development of mines and minerals. As discussed earlier the State legislature is denuded of power to make laws on the subject in view of Entry 54 of List I and the Parliamentary declaration made under Section 2 of the Act. "

The decisions of this Court, therefore, also lead to the conclusion that in case the State for one reason or the other lacks legislative competence, the court must proceed on the basis that Parliament alone has the legislative competence and it would not be permissible to uphold the State Act by leaning in favour of the State or by giving a broader meaning to the entry in List II relating to the subject matter of legislation.

PITH AND SUBSTANCE:

Doctrine of pith and substance, however, is taken recourse to when examining the constitutionality of an Act with respect to competing legislative competence of the Parliament and the State Legislature qua the subject matter. Incidental entrenchment however is permissible.

In D.C. & G.M. Co. Ltd. v. Union of India, it has been held: "When a law is impugned on the ground that it is ultra vires the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. To resolve the controversy if it becomes necessary to ascertain to which entry in the three Lists," the legislation is referable, the court has evolved the doctrine of pith and substance. If in pith and ubstance, the legislation falls within one entry or the other but some portion of the subject-matter of the legislation incidentally trenches upon and might enter a field under Another List, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence."

In Ishwari Khetan Sugar Mills (P) Ltd. v. State of U.P., it was held: "When validity of a legislation is challenged on the ground of want of legislative competence and it becomes necessary to ascertain to which entry in the three lists the legislation is referable to the court has evolved the theory of pith and substance. If in pith and substance a legislation falls within one entry or the other but some portion of the subject-matter of the legislation incidentally trenches upon and might enter a field under another list, the Act as a whole would be valid notwithstanding such incidental trenching."

The question which, therefore, is required to be posed and answered is as to whether both the Acts can stand together or not.

While determining the question as to whether there exists any conflict, the real test would be as to whether both the legislations covering the field can stand together. For the purpose of determination thereof, it may be necessary to look to the legislative history as also the decisions of this Court.

In Kartar Singh v. State of Punjab this Court held:

"67. In order to ascertain the pith and substance of the impugned enactments, the preamble, Statement of Objects and Reasons, the legal significance and the intendment of the provisions of these Acts, their scope and the nexus with the object that these Acts seek to subserve must be objectively examined in the background of the totality of the series of events ....."

Ascertainment of pith and substance is synonymous to ascertainment of true nature and character of the legislative competence necessitated for the purpose of determining whether it is a legislation with respect to one of the matters of the list. Human expression and fallibility of legal draftsmanship cannot be lost sight of. The principles of pith and substance is, thus, required to be applied only in appropriate cases.

ANALYSIS : RE: LEGISLATIVE FIELD :

In the economic front, the country has to compete with the developed countries. Global competition has reached such a stage that despite adequate production of coal and steel, the same are imported from other countries in India. In the international markets also the question of import is going up as compared to export. The manner in which the revenue is collected by the Centre and distributed to States falls for consideration by the appropriate constitutional authorities in terms of the provisions of the Constitution. It is not correct to say that while interpreting the legislative field the country in case of conflict would lean in favour of the State keeping in view the fact that taxes under different heads are collected by the Centre and a part of revenue is made available to the States from time to time. This Court is not concerned as to whether the Centre consumes the lion's share of revenue or the same is subject matter of criticism at the hands of the State or financial observers. Such an approach would not only run counter to the doctrine of federalism with a strong Centre but in the long run would prove to be counter-productive. India is a signatory to various international treaties and covenants and being a party to WTO and GATT, it is obligated to fulfill its trans-national obligations. If for the purpose of giving effect to the international treaties, it in exercise of its power under Article 253 of the Constitution of India had taken over the legislative field occupied by List II of the Seventh Schedule of the Constitution, no exception thereto can be taken. While doing so, the Central Government shall give effect to the will of the makers of the Constitution and would not act contrary thereto or inconsistent therewith. The legislative fields of the Union and the State vary from country to country depending upon the requirement of the situation in which such provisions are made. Although a lot can be said on the subject, keeping in view the fact that our job is confined to interpretation of the legislative entries vis-a-vis the Parliamentary and Legislative Acts, it may not be necessary to do so. But suffice however it to point out that when such an approach is adopted, we would be more prone to committing errors. We must proceed on the basis that neither the Union nor the State is supreme on the Constitution, as both the Union and the State will have to trace their power from the provisions of the Constitution. We should treat the subject with caution and

circumspection.

The interpretive principles whether leaning in favour of the Union or the State may, in certain situations, depend upon the subject matter of legislation, the importance thereof and its effect and impact within and outside the country. Both mineral and tea deserve more control only by the Union having regard to their importance in national economy.

In ascertaining the subject matter, or the scope or purpose of the legislation, the Court is entitled to give due regard to its economic effect. (See The King v. Barger (1908) 6 CLR 41 and Attorney-General for Alberta v. Attorney General for Canada (1939) AC at pp. 130-132) The aforementioned decisions have been referred to in The State of South Australia and Anr. v. The Commonwealth and Anr., [(1942) 65 C.L.R. 373].

Distribution of taxes by the Central Government in favour of the State Government is of no moment in the instant case as the entire royalty fixed by the Central Government in terms of the 1957 Act is payable to the States. The Union Government has nothing to do therewith.

If the Constitution as a living organ is not interpreted having regard to the intention of the constitution makers and in case of conflict in the legislative field contained in List I and List II, if an interpretation that leans in the favour of the State is adopted without reference to the subject matter thereof or national interest, the same would be subject to judicial vagaries which cannot be countenanced.

The impairment of State's economic interest is of no moment even if Parliament had taken over the entire legislative field by enacting Acts in terms of Entry 52 or 54 of List I. As noticed by Brother Lahoti , J in South Eastern Coalfields Limited v. State of M.P. and Ors. [2003 (7) Supreme 539] the rate of 'royalty has been enhanced by the Central Government from Rs. 6.5 per ton to Rs. 120/- per ton. All other States have accepted the same. They are getting enhanced royalty but despite India Cement (supra) and Orissa Cement (supra) the State of West Bengal alone amended the impugned acts and had been insisting that it can levy cess on minerals.

It may not be necessary for us to delve deep into the matter as to whether there exists a distinction between a general subject of legislation and taxation as such a question does not directly arise for consideration. It may only be of some academic interest. It is, however, trite that there is nothing in the Constitution to debar the Parliament to legislate under Entry 54 read with Entry 97 of the List I of the Seventh Schedule of the Constitution.

However, recourse to the residuary power must be taken as a last resort i.e. only when all the entries in the three lists are absolutely exhausted, that is to say, if the subject matter is beyond comprehension of the entries contained in the aforementioned three lists. It is trite that when two interpretations are possible resort to the residuary power may not be taken recourse to.

But it is also trite that the entries have to be given a liberal construction irrespective of the fact that as to whether they are in List I or List II. (See South Eastern Coalfields (supra)).

There cannot be any doubt whatsoever that for the said purpose, the main object as also the scope and purport of the Central legislation vis-a- vis the State legislation must be kept in mind and, thus, there, cannot by any question of examining the same with jaundiced eyes.

With the greatest respect, in Indian context it is difficult to follow Morey v. Doud [(1957) 354 US 457] wherein Frankfurter, J. says "The Courts have only the power to destroy, not to reconstruct." The Courts in India generally leans in favour of upholding the constitutionality of the statute whether enacted by the State Legislature or the Parliament. In this context, reference may be made to the decisions of this Court in Indian Handicraft Emporium v. Union Of India and Balram Kumawat v. Union of India, wherein vires of Wild Life Protection Act has been upheld by applying the principles of 'Purposive Construction".

It is relevant to note that in R.K. Garg v. Union of India [AIR 1981 SC 2138] in which reference of Morey (supra) has been made while judging the constitutionality of Special Bearer Bonds (Immunities and Exemptions) Ordinance, this Court rejected the argument that the said ordinance is immoral stating:

"It was then contended that the Act is unconstitutional as it offends against morality by according to dishonest assessee who have evaded payment of tax, immunities and exemptions which are denied to honest tax-payers. Those who have broken the law and deprived the State of its legitimate dues fare given benefits and concessions placing them at an advantage over those who have observed the law and paid the taxes due from them and this, according- to the petitioners, is clearly immoral and unwarranted by the Constitution. We do not think this contention can be sustained. It is necessary to remember that we are concerned here only with the constitutional validity of the Act and not with its morality."

It is, however, well-settled that although both the Union and the State derive their power from the same Constitution, the States would not have any legal right as against the overriding powers of the Union, because of a general theory of paramountcy or superiority of the Union. The Union can claim overriding powers or superior powers over the State in certain situation because the Constitution itself provides therefore. (See State of West Bengal v. Union of India, , Automobile Transport v. State of Rajasthan, and Ref. Under Article 143, I.T.C Ltd. v. Agricultural Produce Market Committee and Ors.

The importance of the provisions of Article 249 to 253 has been highlighted hereinbefore. The Court is required to interpret the Constitution which is an organic ongoing document. For the said purpose, we are not only required to take into consideration the experience we had had keeping in view the socialistic pattern of the society but having regard to the new vistas opened by reason of globalisation. (See for example, Kapila Hingorani v. State of Bihar, Islamic Academy of Edn. and Anr. v. State of Karnataka and Ors. etc. [(2003) 6 SCC 325], Liverpool & London S.P. Assn. Ltd. v. M.V. Sea Success I and Anr. [2003 (10) SCALE 1] and State of Punjab and Anr. v. Modern Breweries and Anr. [2003 (10) SCALE 202]) ENTRIES 52 AND 54 OF LIST I:

It may be that the interpretation of the legisiative fields of the State List and Union List, should be construed in deference to the extent of declaration made by the Parliament in terms of Entry 52 List I of the Constitution of India. 274. It may also be true that ordinarily the declaration contained in Section 2 of the Act in regard to this requirement as contemplated in Entries 52 and 54 of List I of the Seventh Schedule of the Constitution of India would not affect the legislative competence of the State in relation to raw material.

Although a liberal construction of a State Entry is desirable but at the same time the Court should guard against extending the meaning of the word beyond a reasonable limit.

In Kerala State electricity Board v. Indian Aluminium Co. [(1976 (1) SCC 468], it was held that the entire field of "Electricity" as contemplated under Entry 38 of List III is covered under Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948.

For the purpose of finding out the true nature and character of the Act and the legislative entry whereunder it was enacted, the Statement of Objects and Reasons and the purport and object thereof may be referred to. For that purpose even debates in the Constituent Assembly may be looked into.

In Harakchand Ratanchand Banthia and Ors. v. Union of India and Ors. this Court gave a broad meaning to Entry 52 holding that even preparation of gold ornaments would come within the purview of Entry 52 stating: "But this contention was not accepted. It was contended by Mr. Daphtary that if the process of production was to constitute "industry" a process of machinary or mechanical contrivance was essential. But we see no reason why such a limitation should be imposed on the meaning of the word "industry" in the legislative lists. Similarly it was argued by Mr. Palkhivala that the manufacture of gold ornaments was not an industry because it required application of individual art and craftsmanship and aesthetic skill. But mere use of skill or art is not a decisive factor and will not take the manufacture of gold ornaments out of the ambit of the relevant legislative entries. "

In P. Kannadasan and Ors. v. State of T.N. and Ors. , B.P. Jeevan Reddy, J. speaking for the Bench held:

"35. The fifth contention of the learned counsel for the appellants- petitioners is equally misconceived. Parliament has already denuded the State Legislatures of their power to levy tax on minerals inhering in them by making the declaration contained in Section 2 of the MMRD Act. Shri Sanghi argued that the denudation is not absolute but only to the extent provided in the MMRD Act. Section 9, learned counsel submitted, is one of the facets of the extent of denudation. Section 9, it is submitted, sets out the rates of royalty levied and also states that such rates of royalty can be revised only once in three years. If Section 9 is sought to be amended, whether directly or indirectly, the learned counsel says, a fresh declaration in terms of Entry 54 of List I is called for. This contention assumes that notwithstanding the declaration contained in Section 2 of the MMRD Act, the States still retain the power to levy taxes upon minerals over and above those prescribed by the MMRD Act and that a fresh declaration is called for whenever such subsisting power of the State is sought to be

further encroached upon. This supposition, however, flies in the face of the decisions of this Court in India Cement and Orissa Cement [1991 Supp (1) SCC 430]. The said decisions are premised upon the assumption that by virtue of the said declaration, the States are totally denuded of the power to levy any taxes on minerals. It is for this reason that the State enactments were declared incompetent insofar as they purported to levy taxes/cesses on minerals. The denudation of the State is not partial. It is total. They cannot levy any tax or cess on minerals so long as the declaration in Section 2 stands. Once the denudation is total, there is no ccasion or necessity for any further declaration of denudation or, for that matter, for repeated declarations of denudation. "

(Emphasis supplied) We are not oblivious of the fact that the said decision has been overruled by a three-Judge Bench in District Mining Officer and Ors. v. Tata Iron and Steel Co. and Anr. on a different question as therein the Court laid emphasis that Cess and Other Taxes on Minerals (Validation) Act, 1992 in so far as imposition and collection of cess on minerals extracted upto 4-4-1991 on which date the Supreme Court delivered its judgment in Orissa Cement case (supra) was valid as thereby the Parliament by legal fiction injected legislative competence unto the laws enacted by the Legislature. It was held that the Validation Act did not confer any right to make levy and collection of tax and minerals which was collectable after 4-4-1991.

In Ch. Tika Ramji and Ors. v. The State of Uttar Pradesh and Ors. (1956 SCR 393), the question which arose for consideration was as to whether there existed a repugnancy between the U.P. Sugarcane (Regulation of Supply and Purchase) Act 1953 which was enacted in terms of Entry 33 of List III of the Seventh Schedule of the Constitution and the notifications issued thereunder vis-a-vis the Industries (Development and Regulation) Act, 1951, the Court referred to Nicholas's Australian Constitution, 2 Ed. Page 303, in the following terms :

"(1) There may be inconsistency in the actual terms of the competing statutes (R. V. Brisbane Licensing Court, (1920 28 CLR 23). (2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code (Clyde Engineering Co. Ltd. v. Cowburn, (1926) 37 C.L.R. 466).

(3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject matter (Victoria v. Commonwealth, (1937) 58 C.L.R. 618; Wenn v. Attorney-General (Vict.), (1948) 77 C.L.R. 84).

Isaacs, J. In Clyde Engineering Company, Limited v. Cowburn laid down one test of inconsistency as conclusive : "If, however, a competent legislature expressly or implicitly evinces its Intention to cover the whole field, that is a conclusive test of inconsistency where another Legislature assumes to enter to any extent upon the same field"."

Applying the said tests, the Court upheld the validity of the said Act only on the ground that although raw-material sought to be regulated under the State Act would be essential in the process of manufacture of production of articles in the Scheduled industries but would not be of the same nature or description as the article or class of articles manufactured or produced thereunder. It is in that context, this Court considered the provisions, of Section 18-G of the 1951 Act.

A distinction must be borne in mind as regard "use of land" and "activities on land". Use of land as a 'fair' or 'market' is permissible in terms of Entry 26 of List II. Imposition of tax, however, would be impermissible on 'activity of land' as it does not come within the purview of any of the entries contained in List II.

Different considerations may arise as regard interpretation of different entries keeping in view the lists in which they belong. The Court may have to look from a different angle in a case where it relates to interpretation of conflicting entries in List I vis-a-vis List II; and List II vis-a-vis List III. In a case where both the State Act and the Central Act have been enacted in terms of List III, the question of repugnancy as envisaged under Article 254 would arise. In that type of cases, it is well-settled that in absence of Presidential Assent, the Parliamentary Act would prevail. (See Ch. Tika Ramji (supra) and M.P.A.I.T. Permit Owners Assn. and Anr. v. State of Madhya Pradesh [2003 (10) SCALE 380]) The question, however, must be considered from a different angle where an entry in List II is subject to entry in List I. The Court in such a situation would compare the provisions of the two Acts so as to find out as to whether the entire field has been occupied by the Parliamentary Act or not. The situation may, however, be different where there is no apparent conflict between an entry in List II and one in List I. As having compared the provisions of the two Acts, if it is possible to determine that the parameters of the State Legislation and the Central Legislation are distinct and different, a broader meaning to one Entry or the other may be given having regard to the "pith and substance" doctrine.

What would be the effect of a State entry dealing with the subject matter vis-a-vis Entry 52 of List I came up for consideration before a Constitution Bench of this Court in ITC Ltd. v. Agricultural Produce Market Committee and Ors. The majority applied Tika Ramji v. State of U.P. both having regard to the positive test and negative test evolved therein. Sabharwal, J. proceeded to uphold the market fee levied on tobacco on the basis that Parliament was not competent to pass legislation in respect of sale of agricultural produce of tobacco covered by Entry 52 of the Union List under which the Parliament can legislative only in respect of the industries, namely, "the process of manufacture or production". It was in that premise held that the activity regarding sale of raw tobacco as provided in the Tobacco Board Act would not be regarded as "industry".

Ruma Pal, J. in her concurrent judgment observed :

"To sum up: the word 'Industry' for the purposes of Entry 52 of List I has been firmly confined by Tika Ramji to the process of manufacture or production only. Subsequent decisions including those of other Constitution Benches have re-affirmed that Tika Ramji case authoritatively defined the word 'industry' - to mean the process of manufacture or production and that it does not include the raw materials used in the industry or the distribution of the products of the industry. Given the constitutional framework, and the weight of judicial authority it is not possible to accept an argument canvassing a wider meaning of the word 'industry'. Whatever the word may mean in any other context, it must be understood in the Constitutional context as meaning 'manufacture or production'."

Pattnaik, J., however, for himself and Bharucha, J. (as the learned Chief Justices then were) observed:

"In view of the aforesaid rules of interpretation as well as the Constitution Bench decision referred to above, it is difficult for us to accept the contention of Mr. Dwivedi that the word "industry" in Entry 52 of List I should be given a restricted meaning, so as to exclude from its purview the subject of legislation coming within entry 27 or Entry 14 of List II. Bearing in mind the constitutional scheme of supremacy of Parliament, the normal rule of interpretation of an Entry in any of the lists in the Seventh Schedule of the Constitution, the object of taking over the control of the tobacco industry by the Parliament, on making a declaration as required under Entry 52 of List- I and on examining the different provisions of the Tobacco Board Act, we see no justification for giving a restricted meaning to the expression "industry' in Entry 52 of List I, nor do we find any justification in the contention of the counsel appearing for the States and also different Market Committees that the provisions contained in Tobacco Board Act dealing with the growing of tobacco as well as making provisions for sale and purchase of tobacco, must be held to be beyond the legislative competence of Parliament, as it does not come within the so-called narrow meaning of the expression "industry" on the ground that otherwise it would denude the State Legislature of its power to make law dealing with markets under Entry 28, dealing with agriculture under Entry 14 and dealing with goods under Entry 27 of List II. Such an approach of interpretation in our considered opinion would be against the very scheme of the constitution and supremacy of Parliament and such an approach towards interpreting the power sharing devices in relation to entries in List I and List II would be against the thrust towards centralisation. In our considered opinion, therefore, the word "industry' in Entry 52 of List I should not be given any restricted meaning and should be interpreted in a manner so as to enable the Parliament to make law in relation to the subject mater which is declared and whose control has been taken over to bring within its sweep any ancillary matter, which can be said to be reasonably included within the power and which may be incidental to the subject of legislation, so that Parliament would be able to make an effective law. So constructed and on examining different provisions of the Tobacco Board Act, we do not find any lack of legislative competence with Parliament so as to enact any of the provisions contained in the said Act, the Act in question having been enacted by Parliament on a declaration being made of taking over of the control of the Tobacco industry by the Union and the Act being Intended for the development of the said Industry. 289. Even the majority opinion in I.T.C. Ltd. (supra) would not come on the way of giving a broad interpretation of 'tea' or 'mineral'.

In State of U.P. and Ors. v. Vam Organic Chemicals Ltd. and Ors. a Division Bench of this Court held that having regard to the declaration made in Section 2 of the 1951 Act the whole field of industrial alcohol and its products being covered, the State Legislatures are constitutionally incompetent to levy tax. (See also State of Bihar and Ors. v. Industrial Corporation Pvt. Ltd. and Ors., 2003 (9) SCALE 169) Tea Act, 1953, however, stands absolutely on a different footing vis- a-vis Tobacco Act. Duties and functions of Tea Board is of wider amplitude than Tobacco Board. Its control covers -from selection of seeds - to cultivation - to production - to green tea leaves - the processing of tea - to marketing both domestic and international. No legislative field has been left untouched which can be entrenched upon by the State Legislature. It is in the aforementioned backdrop the right of the State in terms of Entry 49 List II must be held to have been denuded.

Section 25 of the Act provides for imposition of cess on production of tea. Production has a direct nexus with the activities of the Tea Board as enumerated under the Tea Act. Imposition of levy of cess on production of tea in terms of Section 25 of the Act is over and above the power to impose excise duty under the Central Excise and Salt Act, 1944. Thus, to impose cess on production of tea is the field occupied by the Parliament. We have no manner of doubt that Section 25 has been enacted specifically for the purpose of controlling the price of 'tea' both for the purpose of its consumption within and outside the country. The State, therefore, must be held to be denuded of its power to impose any tax on production of tea. It is furthermore well-settled that for the purpose of determining the extent of the field occupied by a Parliamentary legislation, it is not necessary to find out as to whether any rule has been framed in terms of the provisions of the Act or not. [See Bharat Coking Coal Ltd. (supra) Indian Aluminium Company (supra).

The Parliament in enacting Tea Act has exercised its superior power in the matter in terms of Article 253 of the Constitution of India. Such superior power in certain situation can also be exercised in terms of Entry 33, List III as also overriding powers of the Parliament during National emergency including those under Articles 249, 250, 251 and 252 of the Constitution of India. (See I.T.C. Ltd. (supra) Once it is held that the Parliament has exercised its superior power which is conferred on it in terms of Article 248 of the Constitution of India, the question of levy of any tax on the product would not arise.

It is not a case where tax is imposed by the State in exercise of its power which has no direct nexus with Entry 52 of List I.

It is furthermore trite that the purport and object of the Act must be taken into consideration while construing competing entries.

It is trite that a broad meaning to a word may be given having regard to the purport and object of the Statute.

In Amrendra Pratap Singh v. Tej Bahadur Prajapati and Ors. , Lahoti, J. speaking for a Division Bench assigned an extended meaning of the expression "transfer of immovable property".

In State of A.P. etc. v. National Thermal Power Corporation Ltd. and Ors. etc., Lahoti, J. speaking for the Constitution Bench has also given an extended meaning of the word "sale" by holding that the same would mean "use or consumption". It was held :

"...In C.P. Motor. Spirit Act, Re (Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, Re, AIR 1939 FC 1) it was held that two entries in the lists may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between them. The court should strive at searching for reasonable and practical construction to seek reconciliation and give effect to all of them. If reconciliation proves impossible, the overriding power of the Union Legislature operates and prevails."

Even no extended meaning is given to the word "tea" both for the purpose of Tea Act and the impugned Acts, as green tea leaves would admittedly come within the purview thereof, having regard to the object and purport the Tea Act seeks to achieve, in my opinion, no tax can be imposed thereupon.

Keeping in view the constitutional scheme, the Entries 52 and 54 must be given liberal meaning vis-a-vis Entries 49 and 50 of List II having regard to importance of coal and tea which have an immediate and direct bearing on the economic development of the country.

What is required to be kept in mind in a situation of this nature is the object underlying the provisions of the 1953 Act and 1957 Act. Once it is found that the object of the 1957 Act is to denude the State from enacting a statute and it will have a direct impact on regulation of mines and minerals development as also control of Tea industry, the Central Acts would be construed liberally vis-a-vis the State Acts.

The discussions on the subject must revolve round keeping the aforementioned factor in mind.

The importance as regard fixation of price of coal and tea has a direct bearing with the regulation of mines and minerals development as also the Tea Industry. The Central Government has also reduced the custom duty on coal taking into the aforementioned consideration in view as would appear from a notification issued by the Central Government on 8.1.2004 under the provisions of the Customs Act.

The importance of fixation of value of coal will also be noticed from the Statement of Objects and Reasons of the 1957 Act as the State even did not intend to increase the rate of royalty, which would have an adverse effect on production of coal. The impact of value of coal by reason of imposition of royalties and taxes had, therefore, all along been kept in mind by the Parliament.

If a restricted meaning is given to Entries 52, 54 and 97 of List I and a broad meaning is given to Entries 5, 23, 24, 49 and 50 of List II of the Seventh Schedule of the Constitution of India, the same may result in incongruity inasmuch as thereby the goal and object of the Constitution makers would not be achieved. By enacting the 1953 Act and the 1357 Act, the Parliament intended that nothing should come in the way of mineral development or tea industry. The Courts while interpreting the statutes should avoid such construction whereby the State Legislature would be encroaching upon the areas covered by the Parliamentary Act indirectly which they could not do directly.

It must also be borne in mind that Entries 54 and 52 of List I stand on different footings. In terms of Entry 54 List I, if a declaration is made by the Parliament to regulate mines and minerals development the power of the State Legislature to make any legislation in relation thereto is denuded whereas in terms of Entry 52 List I of Seventh Schedule the Parliament by law declares the control of industries to be expedient in public interest. The power to make law by the State Legislature in respect of such industries, thus, upon such declaration shall stand denuded. Cultivation of tea would also come within the purview of tea industry having regard to the provisions of the Tea Act is beyond any cavil. Interpretation of General Entry vis-a-vis Tax Entries :

Principles of interpretation on the conflicting entries cannot be placed in a strait jacket formula. Rule of interpretation will vary, depending upon the subject matter of legislation. A view that power of taxation may not be found in a general entry would be too simplistic to bear the test of constitutional interpretation. Regulating statute may contain taxing provisions. A statute, yet again, may contain both general provisions as also the taxing ones.

The decisions of the Privy Council in Gov.-Gen. in Council v. Madras [1945 FCR 179] on the question of interpretation as regard conflicting legislative entries in general and tax entries in particular may not be apposite in the instant case inasmuch herein we are concerned with only one question, namely, whether the field of taxation of mines and minerals which are extracted and ceases to be a part of the surface is wholly covered or not. One of the principles for reconciling conflicting tax entries is to ascertain as to whether a person, thing or activity is the subject matter of tax and the amount of the tax to be levied. The question which has to be answered on the basis of the aforementioned principle is, is it a tax on land or tax on mineral. If having regard to the nature of tax and keeping in view the history of the legislation to the effect that the State of West Bengal has all along been trying to impose tax on minerals as opposed to tax on land, is taken into consideration, it will be noticed that endeavours have been made to continue to impose 'cess' on mineral and mineral rights in the garb of 'land tax'.

The decisions of this Court as referred to hereinbefore including India Cement (supra) must be judged from this angle and not in vacuum. It may be true that taxation is regarded as a distinct matter and has separately set out in List I or List II of the Seventh Schedule of the Constitution of India but the what should be borne in mind is that the same by itself is not determinative of the nature of the statute. There are statutes and statutes; one statute may cover general entry as also a taxation entry whereas another may be enacted only in terms of the general entry and third in terms of a tax entry.

In M.P. Sundararamaier & Co. v. State of Andhra Pradesh and Anr. [1958 SCR 1422], this Court was concerned with the validity of imposition of tax on inter-State sales under the Madras General Sales Tax Act and was not dealing with a matter of this nature.

The fact that under the constitutional scheme taxation is regarded as a distinct matter and is separately set out is not decisive for the purpose of determining the validity thereof. There exist a large number of statues and indeed the constitutional scheme permits imposition of tax to regulate a particular trade.

The observation in Synthetics & Chemicals v. State of U.P. [(1991) SCC 109] that the tax may not be levied under a general entry although may be correct but the same would not mean that a regulatory fee which is in the nature of a tax cannot also be imposed. No hard and fast rule can, therefore, be laid down and each case has to be considered on its own merit.

Can it, therefore, be said that a regulating statute being a general statute, no tax thereunder could be imposed. It. may not be necessary for us to delve deep into the matter as to whether power of regulation and control is separate and distinct from the power of taxation. Generally speaking, it

may be true that power to regulate would not carry with it the power to impose tax but the same does not have an universal application. The question which would arise for consideration is whether constitutional scheme expressly permits such a legislation but the question which should be posed is as to whether the constitutional scheme prohibits enactment of such a statute. Such prohibition does not exist and in that view of the matter, it is permissible for the Parliament to enact a statute both in terms of a general entry as also a taxing entry. No decision has been brought to our notice to suggest that the same is impermissible in our constitutional scheme.

As regard Entry 97 of List I, this Court in Union of India v. Shri Harbhajan Singh Dhillon held:

"47. The last sentence applied much more to the Constitution of a sovereign democratic republic. It is true that there are some limitations in Part III of the Constitution on the Legislatures in India but they are of a different character. They have nothing to do with legislative competence. If this is the true scope of residuary powers of Parliament, then we are unable to see why we should not, when dealing with a Central Act, enquire whether it is legislation in respect of any matter in List II for this is the only field regarding which there is a prohibition against Parliament. If a Central Act does not enter or invade these prohibited fields there is no point in trying to decide as to under which entry or entries of List I or List III a Central Act, would rightly fit in."

(See also Satpal & Co. (1979) 3 SCR 1031) The Parliament can impose excise duty on coal in terms of Entry 86 of List I. A regulatory fee which would also be in the nature of tax can also be imposed under Entry 54 read with Entry 97. There is no limitation on the power of the Parliament to make an Act under several entries, one of which may be a tax entry.

This Court must also not forget that there exists a difference in interpretation between an entry relating to fee and entry relating to tax. Once it is held that the matters in the State List is to the extent of declaration stand substracted from the scope and ambit of Entry 23 of the State List, even no fee can be levied which will come in the way of Central Government's power of regulation of mines.

Assuming royalty, deed rent and surface rent would not come within the purview of definition of tax, this Court is merely required to consider as to whether such a power exists in the Parliament or hot.

The validity of the Mines and Minerals (Regulations and Development) Act is not in question. Section 25 of the 1957 Act in no uncertain terms states that any rent, royalty, tax, fee or other impost under the said Act or the rules made thereunder can be recovered as arrears of land revenue.

The very fact that the expression 'tax, fee or other sum due to the Government' which could be imposed under the Act and the recovery thereof is the subject matter of Section 25 of the Act, this Court, as noticed hereinbefore, in a large number of decisions held that such a power to impose tax exists under the Act. Question of recovery of tax would arise only when it is imposed under the Act or the rules framed thereunder.

Section 25 of the M.M.R.D. Act, 1957 by necessary implication refers to the taxing power of the Parliament. Imposition of taxes on minerals rights would affect the development of mines and minerals. The Parliament's authority to regulate and control mineral development would be seriously impaired and affected if it is held that the matter relating to imposition of tax on mineral is also vested in the State. The vires of Sections 9 and 9A of the 1957 Act has not been questioned. In fact, they have been held to be intra-vires in State of M.P. v. Mahalaxmi Fabric Mills Ltd. Saurashtra Cement and Chemical Industries Ltd. v. Union of India [(2001) 1 SCC 91] and South Eastern Coalfields Ltd. (supra). Unless power to levy compulsory impost is held to be ultra vires the Constitution, it cannot be held that the Parliament has encroached upon the States' power of taxation.

Furthermore, Entry 36 of List I of the Government of India Act, 1935 was the corresponding provision of Entry 54 of List I of the Constitution. Similarly, Entries 23 and 44 were the corresponding provisions in the List II in the Government of India Act containing identical provisions as in Entries 23 and 50 of List II of the Constitution. Mines and Minerals (Regulation and Development) Act, 1948 was enacted which was referable to Entry 36 of List I of the 1935 Act. The said 1948 Act inter alia contains provisions for levy of taxes. [See Section 6(2) of the 1948 Act] The history of legislation as regard regulation of mine and development of mineral is a pointer to the fact that Section 6(2) of the 1948 Act not only provided for prohibition of the mining, quarrying or digging or the excavating or collecting of minerals from any mine or in any area, but also provided for imposition of tax.

Nobody says that by reason of rule making power, a tax can be levied under Section 13(2)(i) but what has been held by this Court is that the field of imposition of tax, fee or any other sum has been conferred on the Parliament under the Mines and Mineral (Regulation and Development) Act itself by necessary implication or otherwise as otherwise there would not have been any reason for the Parliament to say that such tax, fee or any other sum due to the Government 'under this Act' meaning thereby '1957 Act' or the rules framed thereunder would be recoverable.

It may also be true that by reason of rule making power as contained in Section 13(2) and Section 15(1A) the Parliament has not delegated the power to impose tax upon the Central Government or the State Government, as the case may be. This might have been done considering the fact that the Parliament would make use of it, as and when occasion arises therefore, the Parliament by enacting Sections 25 both in the 1957 Act and the 1953 Act reserved the authority unto itself to impose any other tax falling in List I. The Parliament may also impose a tax which otherwise would not fall in any one of the taxing entries but may fall under the residuary entry being Entry 97. Only because in Section 13(2) or Section 15(1A) of the Act power to impose tax has not been delegated, the same would not mean that the field in relation thereto is not covered as the said expression specifically finds place in Section 25 of the Act.

The expressions 'under this Act or the rules made thereunder' are significant.

In Hingir Rampur Coal Co. Ltd. v. The State of Orissa and Ors. and State of Orissa v. M.A. Tulloch, the interpretation of Section 25 under Act No. 67 of 1957 Act did not fall for consideration.

Recovery of tax is an incident of imposition of tax. Tax has three elements (i) taxing event; (ii) assessment; and (iii) recovery.

Recovery of a tax is a part of the taxing statute. The provision of another Parliamentary Act cannot be resorted to for realisation of tax imposed by the State or vice versa.

The power to impose tax, therefore, cannot be traced to Section 13 alone but must also be traced to Section 25. If that view is taken, it would not be necessary to apply the principle of ejusdem generis for the purpose of interpretation of Section 2((1) and 13(2)(i) of the Act, Those taxes, fees and charges which would come in the way of regulation of mine and mineral development should be held to have been forbidden. So read Sections 13(2) and 25 can be given an appropriate meaning. It will, therefore, not be correct to say that Section 25 can be construed to be containing only a recovery provision. The question, it will bear repetition to state, would be not that as to whether any tax, fee or any other charges of whatever nature have been levied under the 1957 Act but the question would be whether the field in respect thereof is covered or not. In that view of the matter, the question of inference as regard the power to tax by necessary implication or otherwise would not arise. For the aforementioned purpose what would be required to be considered is to read Sections 13, 18 and 25 together harmoniously.

It may be true that in Section 25 the Parliament has not explicitly stated as to tax would be due to whom; but that would not mean the provision is vague. That would simply mean that whosoever would be entitled to the impost can take recourse thereto. Under the 1957 Act, it is the State Governments who are the beneficiaries but that is of not much consequence.

M.A. Tulloch (supra) must be read in the aforementioned context and so read the logical corollary would be that the field for levy of tax, fee or other charges must be held to have been covered under the 1957 Act. Entry 97, List I of the Seventh Schedule of the Constitution of India indisputably should be taken recourse to as a last resort but once it is held that the Parliament has expressed its intention to cover the field of taxation also under the 1957 Act, source of such power must be traced to the appropriate entries in List I including Entry 97, whence if no other source is traceable.

The matter may be considered from another angle. The States on their own showing are entitled to levy, tax upon exercising the power which are said to be in terms of Entries 49 and 50 of List II and in that view of the matter Section 25 of the Act can be taken recourse to for the purpose of recovery of tax imposed in terms of the statute enacted by the State. To put it differently, the provisions of the Central Act which is said to be meant for recovery of the tax, fee and other charges imposed in terms of provisions thereof or the rules made thereunder cannot be resorted for recovery of any tax made by the State in terms of its taxing power under any of the entries contained in List II of the Seventh Schedule of the constitution of India. Section 25 of the 1957 Act could have been taken recourse to for the purpose of recovery of dues to the State provided the State Act was Inter linked with the Parliamentary Act or the same was otherwise permissible in terms of the constitutional scheme.

It is now a well settled principle of law that words in a statute should be so construed so as not to be considered as surplages or superfluous. Each would, as is well-known must be given its proper

meaning. If the aforementioned principle of interpretation of statute is applied, it must be held that the Parliament made its intention clear so as to cover the entire field including the field of taxation; as otherwise there is absolutely no reason as to why consciously the words 'tax, fee or any other charges' have been used in Section 25 of the Act.

The decision in Union of India v. Shri Harbhajan Singh Dhillon is also relevant in this context. In the said decision this Court was concerned with the provision of Section 24 of the Finance Act, 1969 whereby the definition "net-wealth" in the Wealth Tax Act was amended including the agricultural land in assets for the purpose of calculating tax on the capital value of the net wealth. The High Court held the said provision as unconstitutional.

The majority speaking, through Sikri, CJ, gave effect to Article 248 of the Constitution of India stating :

"We must also mention that no material has been placed before us to show that it was ever in the mind of anybody, who had to deal with the making of the Constitution, that it was the intention to prohibit all the Legislatures in this country from legislating on a particular topic."

In the said decision, therefore, it was held that the Parliament in certain situation has the legislative competence to impose tax touching agricultural activities although 'agriculture' comes within the legislative domain of the State legislature. Such a finding was arrived at having regard to the fact that the Parliament was aware that specific provision may not be found in the three Lists for the purpose of imposition of all types of taxes and in that situation Entry 97 of List I could be taken recourse to.

But the question as to why the Parliament did not confer any power to tax the capital value of land as an asset either on the Central Government or the State Government does not fall for our consideration in this case. If an occasion arises, such a question has to be considered on its own merits, but the fact remains that so far as mines and minerals are concerned, levy of tax thereupon in any manner whatsoever is not within the power of the State. The State cannot assume such power indirectly by seeking to impose tax on land which it cannot do directly. So far as 'tea' is concerned, power to impose excess duty on 'tea' is expressly conferred on the Central Government in terms of Section 25 of the Tea Act.

The decision in Harbhajan Singh Dhillon (supra) was followed in Union of India and Anr. v. Delhi High Court Bar Assn. and Ors..

The decision in His Holiness Kesavananda Bharati Sripadagalbvaru etc. v. State of Kerala and Anr. cannot be read to mean that Entry 97 is non est in the eye of law.

It will bear repetition to state that it is not a case where we are concerned with the validity of the tax imposed by the Parliament but we are only concerned with the interpretation of a statute in terms of the constitutional scheme of distribution of legislative fields for the purpose of ascertaining as to whether the entire field is covered by the parliament Act or not.

Once it is held that the entire field of mines and minerals as also on tea including the power to impose any tax as covered by the 1953 and 1957 Act, the impugned tax by way of levy of cess on coal and tea must be held to be ultra vires.

The question as to, whether the power to impose tax must be express or not is of no moment inasmuch it does not arise for our consideration. Levy of excise duty on minerals is permissible in terms of Entry 86 of List I, so is power to impose income tax on profits and gains from business of mining. The question as to whether the power to tax must be express or not could have been gone into; had the vires of taxing statute fallen for our consideration and not otherwise.

The doctrine of enforcement of police power is not applicable in India. Power to regulate the trade and for the said purpose imposition of tax is well-known in India. Mines and Minerals (Regulation and Development) Act is also a regulatory statute.

In the State of Punjab and Anr. v. Devans Modern Brewaries Ltd. and Anr. [2003 (10) SCALE 202], majority of three Judges of a Constitution Bench of this Court upheld the levy of import tax on liquor which apparently was made by the State in terms of Entry 51, List II of the Seventh Schedule of the Constitution of India as a valid piece of legislation as if the same was enacted in exercise of the State's regulatory power under Entry 8. In that case, taxing statute has been upheld having been imposed by way of regulatory measure stating : "The High Court of Punjab proceeded to decide the case on a total wrong assumption that the import fee levied is in the nature of duty which cannot be imposed under the Excise Act, 1984 when, in fact, the import fee levied is the price for parting with the privilege given to the licensee to import beer into the State and, therefore, the same is within the competence of the State to impose import fee. I am of the view that the licensee besides the payment of duty etc. is to comply with such conditions as the State Government may impose while formulating the excise policy for the concerned year. The State, in my view, is competent and entitled to impose excise duty or countervailing duty. Besides there is no bar on the State to charge any other fees on account of consideration for the privilege provided to the licensee to trade in liquor which privilege he did not otherwise have. Therefore, the licensee is liable to comply with the other conditions imposed by the State Government from time to time. As held in many cases referred to supra the levy in dispute under challenge is an import levy..."

Imposition of tax by way of regulatory measures, therefore, is permissible while enacting a regulatory statute.

Regulatory licence fee also has been held to be tax. The decision of a Seven-Judge Bench of this Court in Synthetics and Chemicals Ltd. and Ors. v. State of U.P. and Ors. is also an authority for the proposition that such regulatory measures by imposing tax is permissible in law. It is also for that purpose reference to Entry 97 of List I of the Seventh Schedule of the Constitution of India assumes relevance.

In these matters, this Court is not concerned with an imposition of tax as a result whereof the trade or commerce in the commodity in question is affected. In this case, the court is concerned with interpretation of statutes whereby the power of taxation on fixation of price thereof is vested in the

Central Government under the Parliamentary Act, viz. the 1957 Act and the Tea Act, 1953; and in that view of the matter the contention that the State has a plenary power of taxation loses significance. Brother Lahoti, J. has referred from Cooley on Constitutional Law and G.P. Singh's Principles of Statutory Interpretation so as to emphasize the necessity of strict interpretation of a taxing statute. Once a strict construction of a taxing statute is applied it is possible to hold that the exercise of the State's jurisdiction is really an act of fraud on the constitution inasmuch while imposing tax on land it seeks to levy tax on mines and minerals or tea in relation whereto it has even no regulatory power.

Furthermore, we have noticed hereinbefore that the cess imposed by the State of West Bengal is not reasonable as the same will have a great repercussion on the activities on coal bearing land.

It may not be proper for the Court to venture into an enquiry as to whether the impugned tax would hamper mineral development or not but once it is found that it tinkers with the subject, having regard to the constitutional scheme the State would be denuded of its power. If despite the same, a State chooses to exercise such power, its action will be fraudulent and cannot be supported for any purpose whatsoever, even if thereby a reasonable tax or fee has been levied.

With utmost respect, I may observe that this Court may be setting a wrong precedent to ignore larger Bench decisions of this Court relying on or on the basis of the comments made by an author, however, eminent he may be, as judicial discipline mandates that we follow binding precedents. An author is entitled to criticize a judgment but such criticism cannot be the basis for ignoring binding decisions of larger benches.

The principles of reading a judgment is well-known. What is binding in terms of Article 141 of the Constitution of India is the ratio of the judgment. The ratio decidendi of a judgment is the reason assigned in support of the conclusion. If the reasons contained in a judgment do not appeal to a subsequent Bench, the matter may be referred to a larger Bench but so long the same is not done, the ratio can neither be watered down nor brushed aside. India Cement (supra), Orissa Cement (supra) and others judgments of Coordinate Benches are binding on us. Correctness or otherwise of the said judgments has not been questioned. It would, therefore, not be proper for this Court to read something in the judgment which does not appear therefrom or to exclude from our consideration reasonings on the basis whereof, the conclusions of the judgment had been reached.

If imposition of a regulatory fee is permissible on mineral or tea then the power therefore must be held to be in the Central Government having regard to the 1957 Act and the 1953 Act. If the subject matter of tax is land, the power is with the State Government unless its power is denuded or otherwise limited. However, anything which entranches upon the field of Regulation of Mines and Minerals Development or industrial activities whether by reason of levy of any tax or impost, would necessarily be forbidden.

ENTRY 49 LIST II - Interpretation of:

General Entry 49 of List II confers legislative competence upon the State to impose tax on 'Land' and 'Building'. Coal bearing land or mineral bearing land for the purpose of Entry 49, however, may not be equated with the land as ordinarily understood. Land in its ordinary meaning may be an agricultural land or a non-agricultural land. It may also be a mineral bearing land. Mineral bearing lands, however, are governed by the provisions of the 1957 Act and the rules framed thereunder, so far as the same is covered by the declaration contained in the statute. In terms of the provisions of the said Act, cess, dead rent, as well as surface rent are payable. Tea Industry is governed by 1953 Act.

The effect of the Union Legislation vis-a-vis the State Legislation on the same subject recently came up for consideration before a Bench of this Court. Despite holding that the State has the power to levy market fee, this Court observed that 'seeds' which would otherwise come within the purview of the definition of 'wheat' would not be subject to such levy having regard to the provisions of Parliamentary Act known as the Seeds Act 1966. (See Krishi Utpadan Mandi Samiti and Ors. v. Pilibhit Pantnagar Beej Ltd. and Anr. [2003 (10) SCALE 432] When, thus, the field is covered by Parliamentary Legislations, an effort has to be made that a conflict with a State Legislation is avoided.

ENTRY 49, LIST II VIS-A-VIS 1957 ACT:

In assessing the field covered by an Act of Parliament, one has to be guided not merely by the actual provisions of the Act or the Rules made thereunder, but should also take into account matters and aspects which can be legitimately brought within the scope of the statute.

In this case, we are concerned with the Interpretation of two entries in List I and List II of the Seventh Schedule of the Constitution of India. The legislative competence in terms of Entry 49 List II is to be considered in the light of Entry 54 List I. In a case of this nature, the court cannot raise a presumption of constitutionality of the State Act as the ultimate answer to the question will have to be ascertained as to which extent the field is covered. If the tax on mines and minerals is a subject matter which is covered under the 1957 Act, the power of the State must be held to be denuded.

Entry 49 of List II, however, should be read in such a manner so that the surface land must have a direct nexus with the sub-soil right which is an inchoate right. Indisputably, sub-soil right would include mineral right. Mining lease for winning of coal may be granted for huge area but depending on the nature of mining activities to be carried on, necessarily the mining lessee would not require the entire surf ape thereof except where mineral is being extracted by adopting quarrying method.

A mineral can be extracted from beneath a town, village, national highway, railway track etc., in any manner, without disturbing the surface itself, subject of course upon carrying out the activities in such a scientific manner so that proper and adequate support to the surface is provided. Mineral right may extend to more than one town or village. Thus, there can be separate owners for the surface and the underground. The right of the owner of the surface would necessarily cast a statutory or a contractual liability upon the mining lessee to provide the requisite support to the surface so as not to cause subsidence thereof.

If a wide definition of coal bearing land is given so as to hold that the State is entitled to levy tax on extracted mineral which is severed from land, the same would lead to an incongruous result as thereby value of part of the land itself would be a subject matter of measure of tax although they do not remain 'land' as such. In any event, coal severed from land cannot be said to be yield on coal bearing land so as to hold that the value thereof can be determined only for the purpose of measure of tax vis- a-vis the nature and character thereof.

A tax on land can be imposed so long a land exists. Where, however, for the purpose of extraction of a mineral, the land was dug and the restoration was sought to be made by imposition of a tax by reason of Bihar Forest Restoration and Improvement of Degraded Forest Land Taxation Act, 1992, this Court in State of Bihar and Ors. v. Indian Aluminium Company and Ors. distinguishing Goodricke Group Ltd. (supra) and following State of Orissa v. Mahanadi Coalfields Ltd. [1995 Supp 2 SCC 636], Orissa Cement (supra), India Cement (supra) and other cases observed: "14...While upholding the validity of the Act this Court held that Entry 49 of List II of the Seventh Schedule contemplates the levy of tax on lands and buildings or both as units. Tax on lands and buildings is directly imposed on lands and buildings and bears a definite relation to it...."

15...Therefore, in order that a tax can be levied under Entry 49 of List II it is essential that 'land' as a unit must exist on which the tax is imposed..."

16...Therefore, in pith and substance it is a tax on activity on land and not on land.....itself.

(Emphasis supplied) It was further held:

"17. Mr. Sibal placed strong reliance on the decision in the case of Goodricke Group Ltd. v. State of W. B. [1995 Supp (1) SCC 707] in support of his contention that the levy was on land itself and that the Act would be covered by Entry 49. Goodricke case is clearly distinguishable. There education cess and rural employment cess were levied on certain lands and buildings in the State of West Bengal. The estates were carved out as a separate category and a different rate was prescribed therefore. The cess on tea estates was calculated on the basis of yield of tea whereas cess on other lands was determined having regard to the development value of the same. It was held that the tax was upon land though the cess was quantified on the basis of produce of the tea estate. In the present case, however, we do not find that the tax is on land. In fact what is sought to be taxed is in the absence of land.

It was opined:

"18. One of the facets of tax being levied on land is that the primary responsibility of the payment of tax is on the owner of the land. In the instant case the levy is not on the general ownership of the land but is on the person who uses it and who may or may not be the owner. The primary liability is on the use by the occupier and if the occupier and the owner are two different persons the liability would be that of the occupier alone and not of the owner."

It was further held:

"20. From the aforesaid discussion it is obvious that the present tax is one on the excavation and use of forest land and not on the forest land as such. Taxing of the undertaking of a non-forest activity in a forest land cannot be regarded as being covered by Entry 49 of the State List because what is sought to be taxed is not land but the tax is on absence of land or forest by reason of the activity of excavation and/or mining or use of forest land for a non-forest purpose. The High Court was, therefore, right) in allowing the writ petitions filed by the respondents."

(Underlining is mine for emphasis) It is, therefore, not correct to contend that while purporting to impose tax on land and buildings a State has the legislative competence in terms of Entry 49 of List II of the Constitution while in effect and substance it will entrench upon Entry 52 or Entry 54 of List I thereof.

An impost on lands and buildings must be a tax directly imposed on lands and buildings and must have a definite relation thereto. (See Sudhir Chandra Nawn v. Wealth Tax Officer.

In Orissa Cement Ltd. v. State of Orissa and Ors. [1991 Suppl. 1 SCC 430] it is stated:

"30. ....The former must be one directly imposed on land, levied on land as a unit and bearing a direct relationship to it...."

The tax on land must be a direct impost. Before making an endeavour to deal with the validity of tax in question, certain general principles may be noticed. Indisputably in all jurisdictions real estate which would include land or building is subject to taxation unless the same is exempt or by reason of any constitutional scheme or statutory provision no tax can be imposed.

In Central Coalfields Ltd. v. the State of Bihar Cess on coal in terms of Section 6 of the Bengal Cess Act, 1880 was to be measured on the basis of pit mouth value of coal. The Division Bench noticed that the Cess Act by reason of amendments carried out lay special emphasis on mines and quarries including mineral development thereof irrespective of the fact as to whether they are situate within the Municipal area or not, held: "59. Whenever a tax is based upon the mineral rights, the same would come within the purview of Entry 50 of List II. In India Cement, (supra), as indicated hereinbefore it has clearly been held by the Supreme Court that it is not permissible to read the Constitution in such a manner so as to make one Entry in any list redundant. The effect of the contention of the learned Advocate General that although a tax is imposed on the produce of mine, that is, in terms of Annexure 10 to C.W.J.C. No. 368 of 1990 r, 40% of its pit head value, the same would still retain the character of a tax on land in terms of Entry 49, List II, would render Entry 50 thereof otiose and/or surplusage. This is against the decision of the Supreme Court in India Cement, (supra). Makers of the Constitution in their wisdom have classified the fields of the legislation and conferred power upon the State to impose tax on mineral rights but the same is subject to the limitation imposed by the Parliament by law relating to regulation of mine and development of mineral. Further the Supreme Court clearly held that for the purpose of upholding the validity of a tax on land or building it must be referable as a tax on the land as a unit and not on the basis of the minerals extracted from it."

[Emphasis supplied] Although entries in the Lists are designed to define the area of legislative competence of the Union and State Legislation, the matter has to be considered having regard to the decisions rendered by this Court as also other High Courts. [See Mahabir Prasad Jalan and Anr. v. The State of Bihar and Ors. and State of Karnataka v. Vishwabarathi House Building Coop. Society and Ors.

It has been held in Mahabir Prasad Jalan (supra) that the State is not denuded of its power of acquisition. Therein only for that purpose Entry 14 and Entry 18 of List II was held to have not taken away the legislative competence of the State. (See also Shri Krishna Gyanodya Sugar Ltd. v. State of Bihar The legislative competence of the State in relation to agricultural land as also imposition of tax on land and buildings as contained in Entry 49 of List II must be considered having regard to Entry 52 or Entry 54 of List I and Entry 33 of List III. The legislative competence of the State having regard to Articles 246, 248 and 253 of the Constitution of India, it is trite, would be subject to the legislative competence of the Parliament.

Whenever a tax on land is imposed, the levy must be on the land as a unit. (See India Cement (supra) paras 22, 23) The impugned levies, however, having regard to nature of impost cannot be said to be a tax on land as:

(a) the impost is not directly on land,

(b) the levy does not concern itself with any aspects of land i.e. extent of land, nature, character, quality or location thereof. In the case of mineral, it is already embedded in the earth and there is no question of any yield in the sense that there would be an annual yield or annual income. In case of tea, it is also not concerned with the productive qualities of the land and

(c) the levy is not based on the land as a unit.

It must be noticed that the definition of coal bearing land or the tea estate and/or tea is the same in both the State Acts and the Central Acts. The impugned levy is entirely dependent upon the production of mineral extracted or production of tea leaves which vary from mine to mine or garden to garden or location to location and from year to year.

In the case of coal, the levy varies with the production of mineral without any bearing on the surface land as such. An underground mining lease in respect of 100 acres can be granted with one acre of surface land. When the tax on land is imposed, the question would be to what extent the underground mining right can in the aforementioned context be subject matter thereof. Tax on land can be imposed only in respect of one acre of land. Can the value of coal extracted from 100 acres of land be charged when, in effect and substance, only one acre of surface land is being used and 99 acres of surface land remain untouched.

The aforementioned example is also a pointer to the fact that tax on land is not being imposed as a unit. What would be the unit for the purpose of imposition of tax in the aforementioned context? On one acre of surface land or one acre of surface land together with additional 99 acres of underground

mining right? Such impost, therefore, having regard to its nature and character, in our opinion, cannot be sustained in law.

If the contention of the State of West Bengal is accepted the same would lead to an incongruous result.

Cess is imposed having regard to the valuation of coal bearing land but then in a situation of this nature the question would be as to what would be the unit of land for the purpose of computing the annual value of land; that is one acre of surface land or 100 acres of underground mining right. Furthermore, again the mode of valuation in respect of coal bearing land, namely, one acre of land having the mineral right with surface right intact and other 99 acres of land having mineral right only without any right to use the surface should be different. Yet again a situation may arise where the holder of a mining lease in relation to an underground mineral right has purchased or taken on lease the surface land for carrying out mining operations for having offices or place, stock of coal or siding a railway or transport yard wherefrom coal is transported. The impugned statutes having not provided for computing the annual value of land in such different situations and, thus, the tax on land being not measurable as an independent unit of the land must be held to be not workable. No known method of valuation has been shown to us which provides that although with the extraction of mineral the value of the land would be going down, the value of the coal extracted therefrom can be the method adopted for subject matter of calculating tax on the basis of the land's purported annual value. Computation or annual value of land may be on the basis of actual income derived therefrom or the propensity therefore. But when mineral is being taken out from the mineral bearing land, the value thereof would be diminished and a stage may come where the market value therefore would be zero or in fact the same may require further investments for compliance of the terms and conditions of instrument granting mining lease or the requirement of statutes.

Even a land may contain different minerals in different layers, i.e., at the surface as well as in the bowel of the earth. There are lands consisting of hills or hillocks where minerals like iron ore, manganese ore or where other minor minerals like stone-chips can be found; Whereas the surface may contain brick-earth or other minor minerals like sand etc. Furthermore, the different minerals may be contained in different layers of the underground; major minerals or minor minerals or both. It is also permissible under the 1957 Act and the Rules framed thereunder to grant different mining leases for different minerals adopting different procedures for grant of mining leases having regard to the nature of the mineral, namely, major mineral or a minor mineral.

The impugned levies are, thus, taxes on coal or other minerals raised in the mining areas and not a tax on land as contemplated under Entry 49 of List II. Irrespective of imposition of tax on the land as a unit, the impugned levies have only one consideration, i.e., production of coal which would, thus fall outside the purview of Entry 49 of List II.

In Krishna Mohan (P) Ltd. v. Municipal Corporation of Delhi and Ors. the Court while considering the provisions of the Delhi Municipal Corporation Act, 1957 noticed the definition of 'building and land' contained therein which are as under:

"9. The expression "building" is defined in Section 2(3) as under: "2(3) 'building' means a house, outhouse, stable, latrine, urinal, shed, hut, wall (other than a boundary wall) or any other structure, whether of masonry, bricks, wood, mud, metal or other material but does not include any portable shelter;"

"Land" has been defined in Section 2(24) as follows: "2(24) 'land' includes benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by law over any street;"

Noticing that the expressions 'land' and 'buildings' had separately been-defined and a distinction had been drawn by the Legislature, this Court held that the State could not levy a property tax on machinery in the guise of levy of tax on lands and buildings.

The tax under the impugned acts has not been imposed on land as a unit but on coal. The tax, therefore, is not directly upon the land but upon a part of land, which is mineral and, thus, out of the legislative competence of the State.

Applying the test laid down in several decisions of this Court, we are of the opinion that the impugned cess is not a tax directly levied upon land as a unit by reason--of the general ownership of the lands and buildings.

Mineral Bearing Land vis-a-vis General Rights over Land:

Land may consist of several rights. The surface of the land may be in actual possession of an occupier who has no right or under-raiyat or raiyat or a person having only a right to cultivate thereupon. However, holders of such right ordinarily would not have any right over minerals. Even if a mineral is found on the surface, they must collect the same and keep it at the corner of the land so that the same may be taken away by the owner thereof, which in a case of mining lease, would be mining lessee.

Mineral may be found in the mineral bearing land. Mineral bearing land may, thus, contain mineral as the product of the nature. Mineral may, however, also be deposited on the surface by reason of certain activities as for example, 'coal slurry' which has been held to be 'mineral' may come out of the coal washing plants and deposited in the rivers, nalas or the agricultural fields. Slurry has been held to be a mineral and, thus, governed by provisions of the MMRD Act. (See Bharat Coking Coal Ltd. (supra)).

Bheemagari Bhaskar and Ors. v. Revenue Divisional Officer, Bhonair and Ors. [2002 (1) ALT 159] is another instance where a question arose as regard sand deposited on the land of the Pattadars and claimed by them in terms of the provisions of Andhra Pradesh Estates (Abolition and Conversion into Ryotwari) Act, 1948. Such a claim was rejected by the Andhra Pradesh High Court referring to Jagadish Chandra v. Kanai Lal, Kusum Kamini v. Jagdish Chandra [AIR 1941 Patna 13] and Purnendu Narain Singh v. Narendra Nath [AIR 1943 Patna 31], holding sand being a minor mineral, the agriculturists have no right thereover. It was further held that grant of lease in respect of the said

minor mineral can be granted by the State and in terms of the 1957 Act and the rules framed thereunder.

Some rights are capable of granted by holders of same or higher rights and some only by the State. Even the State, having regard to the doctrine of 'public trust', may not have any power to grant any right in relation to certain matters, e.g., deep underground water.

Deep underground water belongs to the State in the sense that doctrine of public trust extends thereto. Holder of a land may have only a right of user and cannot take any action or do any deeds as a result whereof the right of others is affected. Even the right of user is confined to the purpose for which the land is held by him and not for any other purpose. Even in relation to such matters, no prescriptive right under Section 25 of the Limitation Act would be attracted. Further, even by reason of Section 25 of the Limitation Act, a person must exercise an easementary right without interruption for a period of 30 years in relation to air, way or watercourse or the use of any water or any other easement by enjoying it peaceably and openly as an easement and as of right. Then only such exercise of right to air, way, watercourse, use of water or other easement becomes absolute and indefeasible.

A person who holds land for agricultural purpose may, therefore, subject to any reasonable restriction that may be made by the State may have the right to use water for irrigational purposes and for the said purpose he may also excavate a tank, But under no circumstances, he can be permitted to restrict flow of water to the neighbouring lands or discharge the effluents in such a manner so as to affect the right of his neighbour to use water for his own purposes. On the same analogy he does not have any right to contaminate the water to cause damages to the holders of the neighbouring agricultural fields. Large scale defoulment in the quality of water so as to make it unusable by others or as a result whereof the water is contaminated and becomes unpotable would be violative of Article 21 of the Constitution. In M.C. Mehta v. Kamal Nath, , this Court has quoted with approval an article entitled 'Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention' of Joseph L. Sax, Professor of Law, University of Michigan.

The High Court of Kerala recently by a judgment dated 16th December, 2003 in Perumatty Gram Panchayat Perumatty Vandithavalam P.O., Chettur Taluk represented by its President Sri A. Krishnan v. State of Kerala and Ors. [W.P. (C) No. 34292/2003 (G)] restrained Hindustan Coca Coal Beverages Limited from using ground water for running its plant at Plachimada in Palakkad district stating that the ground water was a national wealth and it belongs to the entire society. It was observed that water was nectar sustaining life on earth and, thus, the State has a duty to protect ground water against excessive exploitation and inaction on its part tantamounts to infringement of the fundamental rights guaranteed under Article 21 of the Constitution.

The purpose of discussions aforementioned is that while imposing a tax on land and in particular mineral bearing laid the Legislature must exercise its power consciously. It must be borne in mind that power to impose tax should not be exercised in a casual or caveliar manner. The members of the legislature must be informed as regard the exact subject matter of tax. It, while imposing a tax on the subject (A) cannot indirectly levy an impost on subjects (B) and (C) and while the validity

thereof is challenged, the State cannot be heard to say that subject (B) or subject (C) also come within the legislative power having regard to other entries of List II of the Seventh Schedule of the Constitution of India. Entry 50 authorises the State to tax mineral rights which has no co- relation with the power to tax land. If both the entries are resorted simultaneously, the statutes bear out the same. From the impugned acts, it cannot be informed that the State intended to Ivy tax both on land and mineral right. The entire gamut of argument, having regard to India Cement, (supra) and Orissa Cement (supra) was confined to Entry 49 but Entry 50 of List I has been taken recourse to in a half-hearted manner.

If a mining operation is carried out through digging incline or pits, the area of the underground may be more than the surface. In that view of the matter, a tax on land cannot be levied having regard to different rights over the same surface unless it is so done on a unit. Only because etymologically the land may mean from the surface to the center of the earth, the holder of an agricultural right or non-agricultural right may not have any right over the subterranean right. Such subterranean right may be used only for the purpose public interest granted to the holder of land under the relevant statute governing the field. The holder of a limited tenancy right, thus, cannot construct a dam or take out all water or mineral underneath.

1957 ACT VIS-A-VIS ENTRY 50 OF LIST II The contour of the 1957 Act would clearly show that the Union had taken over the entire control of mining industry.

The 1957 Act is a comprehensive Act. It is a self-contained Code. Grant of mineral rights, undoubtedly, would come within the purview of regulation of mine and mineral development in terms of the 1957 Act. The entire field of legislation is covered by Parliamentary Act of 1957. When a mining lease is granted, consideration for parting with the mineral right would be a part of the terms and conditions thereof. The right to receive royalty is also a mineral right. State indisputably receives royalty as a consideration for grant of mining lease in terms of the 1957 Act.

Brother Lahoti referring to Black's Law Dictionary, 7th Edition also noticed that a mineral right vests in the owner of the land and is capable of being parted with. As discussed hereinbefore, such a right has vested in the States exclusively and furthermore as grant of such right is governed by the provisions of Parliamentary Acts, the same cannot be subject matter of levy of tax imposed by a law made in terms of Entry 50 of List I.

The terms and conditions including the right to receive royalty, the mode, manner and extent thereof; the limitations in relation thereto as well as enhancement in the quantum thereof are fixed by the statutory provisions, and, thus, the State would be denuded of its power to impose any further levy, impost or tax thereupon. Entry 50 of List II is unique in the sense that it is the only Entry in all the Entries in the three Lists (List I, II and III) (apart from Entry 37) in the Seventh Schedule where the taxing power of State Legislature has been subjected to "any limitation imposed by Parliament by law relating to mineral development". Therefore the moment Parliament makes any law relating to mineral development, the State Legislatures are denuded of their legislative competence to impose any tax or levy on minerals and/or minerals and/or mineral rights. Entry 50 of List II of the Seventh Schedule of the Constitution of India is subject to law enacted by Parliament

in terms of Entry 54 List I of the Constitution of India, and, thus we have no doubt in our mind that a power to levy of tax on mineral right or on despatch of mineral does not exist in the State.

In Black's Law dictionary "mineral right" has been defined as "an interest in minerals in land. A right to takes minerals or a right to receive a royalty." Right to receive royalty is, thus, also a mineral right.

In the same dictionary, "mineral" has been defined as "any valuable inert or lifeless substance formed or deposited in its present position through natural agencies alone, and which is found either in or upon the soil of the earth or in the rocks beneath the soil".

The power to tax on mineral rights, therefore, would essentially be different from a right to tax on mineral actually extracted.

Wanchoo, J. in Hingir Rampur Coal Co. Ltd. v. The State of Orissa and Ors. observed:

"Thus tax on mineral rights would be confined, for example, to taxes on leases of mineral rights and on premium or royalty for that. Taxes on such premium and royalty would be taxes on mineral rights while taxes on the minerals actually extracted would be duties of excise."

The learned Judge further observed:

"There would be no difficulty where an owner himself works the mine to value the mineral rights on the same principles on which leases of mineral rights are made and then to tax the royalty which, for example, the owner might have got if instead of working the mine himself he had leased it out to somebody else. There can be no doubt therefore that taxes on mineral rights are taxes of this nature and not taxes on minerals actually produced."

If the intention of the Constitution maker was to confer an absolute power upon the State Legislature to levy tax whether on mineral rights or minerals, the same could have been worded differently. There was absolutely no necessity to restrict the power to levy tax on mineral rights in State and not to levy tax on minerals whether extracted or otherwise. Mineral rights, therefore, cannot be construed as a mineral already extracted as contradistinguished from being capable of extraction or otherwise in a state or form when embedded in the earth. The State Legislature, therefore, has no legislative competence to impose tax on minerals. In the present context, in view of the 1957 Act, it has also no legislative competence to levy tax on mineral rights which will have a direct impact on mineral development.

In Hingir Rampur (supra), as noticed hereinbefore, the 1948 Act was held to have occupied the entire field of regulation of mine and mineral development. The 1957 Act having regard to Entry 54 of List I contains substantially similar provisions. Even in State of Orissa v. M.A. Tulloch, the 1957 Act was held to have occupied the entire field of mines and mineral development. This Court rejected the contention that the 1957 Act does not contain any provision for levy of tax having regard to Section 25 of the 1957 Act and held that the said provision, by implication, provided for levy of

tax. In India Cement (supra) also this Court held : "30. It seems, therefore, that attention of the court was not invited to the provisions of Mines and Minerals (Development and Regulation) Act, 1957 and Section 9 thereof. Section 9(3) of the Act in terms states that royalties payable under the Second Schedule of the Act shall not be enhanced more than once during a period of four years. It is, therefore, a clear bar on the State legislature taxing royalty so as to in effect amend Section Schedule of the Central Act. In the premises, it cannot be right to say that tax on royalty can be a tax on land, and even if it is a tax, if it falls within Entry 50 will be ultra vires, the State legislative power in view of Section 9(3) of the Central Act. In Hingir-Rampur Coal Co. Ltd. v. State of Orissa, Wanchoo, J. in his dissenting judgment has stated that a tax on mineral rights being different from a duty of excise pertains only to a tax that is leviable for the grant of the right to extract minerals, and is not a tax on minerals as well. On that basis, a tax oh royalty would not be a tax on mineral rights and would therefore in any event be outside the competence of the State legislature."

In Mahalaxmi Fabric Mills Ltd. (supra), the power of the Central. Government to enhance new rates of royalty on various grades of coal was in question.

The arguments as regard lack of legislative competence was repelled referring to India Cement in the following words:

"11. In our considered opinion there is no substance in either of the twin contentions for challenging vires, of Section 9(3). So far as competence to enact Section 9 is concerned, the question is no longer res integra..."

In India Cement (supra), a 7-Judge Bench of this Court held that the 1957 Act and the declaration contained therein being a legislation controlled by Entry 54 of List I the whole field is occupied and Entry 50 of List II is totally excluded.

In India Cement (supra), thus, this Court has held that no tax can be imposed by the State which would have a direct impact on the quantum of royalty.

Further, in Laxminarayan Mining Co. v. Taluk Dev Board [AIR 1972 MYS 299] which has been approved in India Cement, the Mysore High Court observed that a combined reading of Entries 23 & 50 in List II and Entry 54 in List I establishes that as long as the Parliament does not make any law in exercise of its power under Entry 54, the powers of the State Legislature in Entries 23 and 50 would be exercisable by the State Legislature. But once the Parliament makes a declaration by law that it is expedient in the public interest to make regulation of mines and minerals development under the control of the Union, to the extent to which such regulation and development is undertaken by law made by the Parliament, the field of the State Legislature is undertaken by law made by the Parliament, the field of the State Legislature under Entries 23 and 50 of List II are denuded. On this reasoning, in the Mysore High Court Judgment, a Legislation by the State conferring power on the Taluk Board as per impugned notification levy tax on mining activities was held to be unauthorized.

It would not be correct to contend that this decision cannot be read so widely. The power to tax in terms of Entry 50 is subject to a Parliamentary Act. If a Parliamentary Act operates in the field the fight of the State to levy tax or fee is completely taken out from their legislative competence. The 1957 Act deals with mineral rights and admittedly has occupied the entire field relating to regulation of mine and mineral development. Any tax on mineral rights which would be counter productive to mineral development is constitutionally impermissible.

Once it is held that the entire field of legislation is occupied by the Parliament in view of the 1957 Act and the declarations contained therein evidently Entry 50 of List II would not be attracted. This has been held uniformly by this Court and some High Courts in a series of decisions.

The matter may be considered from another angle. Under the Coking Coal Mines (Nationalisation) Act, 1972 and Coal Mines (Nationalisation) Act, 1973, as noticed hereinbefore, all coking coal mines mentioned in the schedule appended to the 1972 Act and all coal mines vested in the Central Government. In terms of Section 7 of the 1972 Act and Section 9 of the 1973 Act, the Central Government was empowered to transfer the said coking coal mines and coal mines to any Government company, as may be notified. Pursuant to or in furtherance of the said enabling provision, the Central Government created various public sector undertakings and transferred the Coking Coal Mines and the Coal Mines as the case may be, to one government company or the other, as a result whereof all the public sector undertakings have become mining lessees in relation thereto as if they had been granted a mining lease in terms of the provisions of the Mines and Minerals (Regulation and Development) Act and the rules framed thereunder for the remainder of the term. All coking coal mines and coal mines except a very few, thus, have become subject matter of statutory mining leases by reason of a legal fiction created under the 1972 and 1973 Acts. In that view of the matter too, Entry 50 of List II of the Seventh Schedule of the Constitution of India may not have any application to such coking coal mines and coal mines, as they have been taken over and are being run by the Government companies in terms of the provisions of the Parliamentary Acts.

The expression 'any limitations' in Entry 50 of List II should not be given a restricted meaning as contended by the appellant. In fact, the rule of interpretation that the language of the entries should be given widest scope, should equally apply to the interpretation of the said words. So read, the limitations on 'taxes on mineral rights' could be in any form, including occupying the entire field of. legislation under Entry 50 of List II by a Parliamentary legislation and providing for levy of taxes. The MMRD Act, 1957 precisely achieves the said objectives by occupying the entire field of legislation covered by both Entries 23 and 50 of List II. (See India Cement (supra)) In Orissa Cement (supra), this Court explained the scope of the MMRD Act, 1957 thus:

"...Section 25 implicitly authorizes the levy of rent, royalty, taxes and fees under the Act and the Rules. The scope of the powers thus conferred is very wide. Read as a whole the purpose of the Union control envisaged by Entry 54 and the MMRD Act, 1957 is to provide for proper development of mines and mineral areas and also to bring about a uniformity all over the country in regard to the minerals specified in Schedule I in the matter of royalties and consequently prices."

This objective would be totally defeated by the impugned levy of cess on coal that has resulted in coal produced in the State of West Bengal totally unremunerative and incompetitive the price of coal so produced being much higher than the price of coal produced in the adjoining States of Bihar, U.P., Orissa, M.P. and Maharashtra as shown in the comparative chart given below:

WEST BENGAL Category/ Grade Specification Size Base-price per Te. Royalty per MT. Stoving Excise duty perMT RE Cess (35% on task) RE Cess (5% on basic) P. W. Road Cess per M.T. AMBII Cess per Mt. TOT. Stad Levies (Excl. St) (A) Price Exel. CST. (B) CST/MT @4% on A (C) Price incl. CST (A+B) Long A 6200 STEAM 645.00 6.50 3.50 225.75 32.25 1.00 1.00 270.00 915.00 36.60 951.60 Flame Kilo SLACK 638.00 6.50 3.50 223.30 31.90 1.00 1.00 267.20 905.20 36.21 941.41 Non Calories; ROM 635.00 6.50 3.50 222.25 31.75 1.00 1.00 266.00 901.00 36.04 937.04 Cooking KG.-UHV B 5600, STEAM 392.00 6.50 3.50 207.20 29.60 1.00 1.00 248.80 840.80 33.63 874.43 6200 Kilo SLACK 585.00 6.50 3.50 204.75 29.52 1.00 1.00 246.00 831.00 33.24 864.24 Calories/ Kg. ROM 582.00 6.50 3.50 203.70 29.10 1.00 1.00 244.30 326.00 33.07 859.87 C 4940, STEAM 522.00 5.50 3.50 182.70 26.10 1.00 1.00 219.80 741 .80 29.67 771.47 5600 Kilo SLACK 515.00 5.50 3.50 180.25 25.75 1.00 1.00 217.00 712.00 29.28 761.28 Calories/Kg ROM 512.00 5.50 3.50 179.20 25.60 1.00 1.00 215.80 727.80 29.11 756.91 M.P. BIHAR U.P. ORISSA AND MAHARASHTRA Category/ Grade Specification Size Base Price per Te. Royally Per MT Stoving Excise Duty- per MT. (A) Price Excl. CST. (B) CST/MT @4% on A (C) Price incl. CST (A+B) Long A 6200 STEAM 645.00 120.00 3.50 768.50 30.74 799.24 Flame Kilo SLACK 638.00 120.00 3.50 761.50 30.46 791.96 Non Calories/ ROM 635.00 120.00 3.50 758.50 30.34 788.84 Cooking Kg.-UHV B 5600, STEAM 592.00 120.0 3.50 715.30 28.62 744.12 6200 Kilo SLACK 585.00 120.00 3.50 708.50 28.34 736.84 Calories/ Kg. ROM 582.00 120.00 3.50 705.50 28.22 733.72 C 4940, STEAM 522.00 75.00 3.50 600.50 24.02 624.52 5600 Kilo STACK 515.00 75.00 3.50 593.50 23.74 617.11 Calories/Kg. ROM 512.00 73.00 3.30 590.30 23.62 614.12 The difference in the ultimate price of coal in the State of West Bengal and other States would, thus, be around 25% of the base price. The submission of Mr. Dwivedi to the effect that the cess imposed is not excessive, therefore, does not appear to be correct. From the aforementioned chart, it is evident that no substantial difference can be culled out so far as the price of coal on despatch vis-a-vis at the pit head is concerned, inasmuch by reason of the amendments made in the impugned Acts only the amount of royalty and other taxes were be deducted, which would only be a sum of Rs. 10/- whereas in lieu thereof sums of Rs. 225.75, Rs. 32.25, Re. 1 and further sum of Re.1 would be levied on the base value of coal by way of rural employment cess, education cess, road cess and other cesses amounting to Rs. 270/- per M.T. The Parliament, on the other hand, haying regard to the decision in India Cement (supra) thought it expedient to increase the rate of royalty from Rs. 6.50 to Rs. 120/- per M.T. The effect of imposition of cess on coal by the State of West Bengal would bring about a radical change in the price of coal in the State of West Bengal vis-a-vis the other States, the effect whereof may lead to crippling of several industries situate in the State of West Bengal or the industries depending upon supply of coal produced therein. It is necessary to consider the effect of the imposts on the price of coal in the context of the legislative competence of the State vis-a-vis the Parliament having regard to the fact that the Parliament in terms of enactments made both under List I and List III is entitled to fix the ultimate price of coal.

We do not intend to lay down any proposition of law that the effect of impost on the price of a commodity which is the subject-matter of legislation will be determinative of the nature and character of the impost but what we intend to say is that the same would be a relevant consideration not only for the purpose of finding out as to whether the same is excessive but also for determining the dispute as to whether the impost would fall within the purview of one or the other entries contained in List I or List II of the Seventh Schedule of the Constitution of India.

It is not correct to contend, as has been done by Mr. Dwivedi that taxing entries and general entries form two separate categories and the power to tax cannot be claimed as power ancillary to general power.

It is not in dispute that grant of mining lease by the State is governed by the provisions of the 1957 Act. It is also not in dispute that payment of royalty and interest thereupon is also governed by some principles which have bearings on the price of coal.

Mahalaxmi Fabric Mills Ltd. (supra) has recently been noticed in South Eastern Coalfields Ltd. (supra) wherein Lahoti, J. speaking for the Division Bench observed :

"Here it is clear from the several provisions of the Act and the rules quoted hereinabove, no mining operation is permissible except in accordance with the terms and conditions of a mining lease and the rules made under the Act. The rules clearly provide for payment of interest."

Having regard to the provisions contained in Sections 2 and 18 of the Mines and Minerals (Regulation and Development) Act, 1957 the Parliament has taken over the entire control of regulation of mines and mineral development. Once such a right of extracting mineral is conferred, even if, the mineral comes out of the mine, say while washing coal in a coal washery or manufacturing coke in a Coke Plant ('coal washery' and 'coke washing plant' are mines under several Parliamentary Acts as also orders and rules governing the field) the State would have no right to deal with the same.

"Mining lease" as defined in Section 3(c) of the Act means "a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose." "Mining Operations" as defined in Section 3(d) means "any operations undertaken for the purpose of winning any mineral" Section 5(1) imposes restriction on the grant of mining leases by a State Government. The essence of mining operation is that it must be an activity connected with mineral whether under the surface or on the earth.

Once the right of winning mineral is conferred in terms of the 1957 Act, the State would be denuded of any power to impose any tax in respect thereof in any form and at any place, even if the mineral is found outside the mineral bearing lands. [See Bharat Coking Coal Ltd. v. State of Bihar and Ors. (1990) 4 SCC 557.] Under the three impugned Acts, as would be discussed in details hereinafter, taxes have been levied on minerals and not on mineral rights and, thus, the State Legislations cannot be supported in terms of Entry 50 of List II.

The levy even otherwise cannot be said to be referable to Entry 50 since:

(a) It is a levy only on minerals extracted or produced from the coal mines;

(b) It is on quantity of minerals produced from the mining lease;

The charging section is directly referable to production of coal. The claim, thus, would amount to a colourable exercise of Power. (See K.C.G. Naravan Deo v. State of Orissa 1954 SCR 1 and Central Coalfields Ltd. and Ors. v. the State of Bihar and Ors.

'Mineral rights' and 'mineral' connote two different things. A mineral may be embedded in earth or is extracted. When it is extracted, it may be a culmination of the right to deal in mineral but the mineral rights would not include a right to despatch extracted minerals.

In India Cement (supra), it is stated that:

"In any event, royalty is directly relatable only to the minerals extracted on the principle that the general provision is excluded by the special one, royalty would be relatable to Entries 23 and 50 of List II, and not Entry 49 of List II. But as the field is covered by Central power under Entry 23 or Entry 50 of List II, the impugned legislation cannot be upheld"

In Ajit Singh v. Union of India Ors. [(1995) Supp. (4) SCC 224], the question which arose was as to whether upon revocation of a mining lease, the area becomes available for regrant and, therefore, whether it is permissible to issue an administrative order fixing a date therefore. It was held that such an administrative order would not be inconsistent with the Rajasthan Minor Mineral Concessions Rules, 1977.

In Inderjeet Singh Sial and Anr. v. Karam Chand Thapar and Ors., this Court was interpreting a deed of assignment. While noticing that royalty refers to 'jura regalia' or 'jura regia' i.e. royal rights and prerogatives of a sovereign in the primary sense, but it was held to signify, as in mining leases, that part of the reddendum, variable though, payable in cash or kind, for rights and privileges obtained. However, having regard to the tenor of the covenants contained in the deed of assignment, it was held : "...The word 'royalty' thus, in the deed was used in a loose sense so as to convey liability to make periodic payments to the assignor for the period during which the lease would subsist; payments dependent on the coal gotten and extracted in quantities or on despatch. We have therefore to construe document x. D-5 on its own terms and not barely on the label or description given to the stipulated payments. Conceivably this arrangement could well have been given a shape by using another word. The word 'royalty' was perhaps more handy for the authors to be employed for an arrangement like this, so as to ensure periodic payments. In no event could the parties be put to blame for using the word 'royalty' as if arrogating to themselves the royal or sovereign right of the State and then make redundant the rights and obligations created by the deed."

In Quarry Owners' Association v. State of Bihar [(2000) 8 SCC 655], the royalty is the tax while agreeing thereto, it was observed : "In considering this submission we have to keep in mind, tax on

this royalty is distinct from other forms of taxes. This is not like a tax on income, wealth, sale or production of goods (excise) etc. This royalty includes the price for the consideration of parting with the right and privilege of the owner, namely, the State Government who owns the mineral. In other words, the royalty/dead rent, which a lessee or licensee pays, includes the price of minerals which are the property of the State. Both royalty and dead rent are integral parts of a lease. Thus, it does not constitute usual tax as commonly understood but includes return for the consideration for parting with its property. In view of this special nature of the subject under consideration, namely, the minerals, it would be too harsh to insist for a strict interpretation with reference to minerals while considering the guidelines to a delegatee who is also the owner of its minerals. In the present case, we are not considering any liability of tax on the assessee but whether delegation to the State by Parliament with reference to minor minerals is unbridled."

As by reason of a Parliamentary legislation in terms of Entry 54 of List I, (1957 Act) a provision has been made in terms whereof the State is compensated for parting with this mineral rights; by necessary implication, it must be held that the powers to levy tax on such rights would also stand denuded.

If a statutory impost would come within the purview of the definition of tax as contained in Clause 28 of Article 366 of the Constitution of India, Entry 54 read with Entry 37 of List I by necessary indication must be held to include the power of taxation also. So viewed, it cannot be said that Entry 54 is a general entry which does not deal with tax in that sense and particularly having regard to the fact that there does not exist any provision that the State can levy tax on extracted minerals, Parliament must, thus, also be held to have power to impose tax on extracted mineral, de'hors the right to impose tax on mineral right, in terms of Entry 97 of List I.

In Union and State Relations under the Indian Constitution by M.C. Setalvad at page 54, the learned author states:

"The exercise of this power has not only helped the Union to legislate for its own purposes, but enabled it to come to the rescue of the States. We may point to the Gifts Tax Act, 1958, the tax on building contracts even though no sale is involved in them; a collection of annuity deposits under the Income-tax Act, 1961, Chapter XXII-A inserted by Section 44 of the Finance Act, NO. 5 of 1384; the Himachal Pradesh Legislative Assembly (Constitution and Proceedings) Validation Act, 1958, removing the disability of members of a Legislative Assembly of a Part C State, which have all been enacted by the Union in the exercise of its residuary power."

Taking any view of the matter, it cannot be said that impugned "cess" under the State Acts is referable to Entry 50 of List II.

In Quarry Owners' Association v. State of Bihar [(2000) 8 SCC 655], imposition of royalty on mines and minerals by the State of Bihar in exercise of its power conferred upon it under Section 15 of the 1957 Act was in question; while considering as to whether the State has exceeded its delegated power in levying excess royalty. Interpreting the expression 'regulation of mines and minerals development' occurring in Entry 54 List I and Entry 23 List II of the Seventh Schedule of the

Constitution of India, it was observed :

"...The word "regulation" may have a different meaning in a different context but considering it in relation to the economic and social activities including the development and excavation of mines, ecological and environmental factors including States' contribution in developing, manning and controlling such activities, including parting with its wealth, viz., the minerals, the Fixation of the rate of royalties would also be Included within its meaning..."

Referring to the decision of this Court in State of Tamil Nadu v. Hind Stone that such regulation may amount to prohibition it was observed that in regulating mineral development, the royalty/dead rent is the inherent part of it. It was observed that provision of Section 18 of the 1957 Act is not excluded from its' application to the mines and minerals development. Therein this Court in no uncertain terms observed:

"It is also significant to record that minor minerals are used in the local areas for local purposes while major minerals are used for the industrial development for the national purpose...' The entry has been copied in verbatim from Entry 44 of List II of the Seventh Schedule of the Government of India Act, 1935. Such an entry was evidently necessary when mineral rights remained vested in private persons by reason of any grant or otherwise. Even now in certain situations, a mineral right may be vested in an individual.

The taxing power of the State in terms of Entry 50, List II of the Seventh Schedule of the Constitution of India must also be viewed from the context that all the mineral rights as also the right to receive royalty by reason of the West Bengal Estates Acquisition Act, 1953 and U.P. Zamindary Abolition Act vested in the State. Section 5(1)(a)(i) of the West Bengal Estates Acquisition Act reads thus:

"5.(1) Effect of notification - Upon the due publication of a notification under Section 4, on and from the date of vesting -

(a) the estates and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all incumbrances; in particular and without prejudice to the generality of the provisions of this clause, every one of the following rights which may be owned by an intermediary shall vest in the State, namely:-

(i) rights in sub-soil, including rights in mines and minerals,...."

The State is, thus, the owner of the mineral right. It is, thus, only for the State which can grant mining lease. Its right to impose tax is exhausted as soon as a mineral right is conferred. In certain circumstances the State may impose tax if and when a mining lessee grant a sub-lease but the same also would be subject to control in terms of 1957 Act and Rule 37 of the Mineral Concession Rules, 1960. Thus, a transfer of mineral right includes a regulation or prohibition on creation of a subordinate interest in relation thereto. Regulation of transfer of such mineral right is also therefore governed by Parliamentary legislation. The State thus can not impose a tax on its own right.

Indisputably, requisite declaration in terms of Entry 54 has been made in Section 2 of the 1957 Act.

Any legislation by the State after such declaration entrenching upon the field disclosed in the declaration must necessarily be held unconstitutional because that field is abstracted from the legislative competence of the State Legislature. (See Baijnath Kedia etc. v. The State of Bihar and Ors.

The word 'control' has been defined in Black's Law Dictionary in the following terms:

"Control-power or authority to manage, direct, superintend, restrict, regulate, govern, administer, oversee."

In Bank of New South Wales v. Common Wealth, [76 CLR 1], Dixon, J., observed that the word 'control' is 'an unfortunate word of such wide and ambiguous import that it has been taken to mean something weaker than 'restraint', something equivalent to 'regulation'. Having regard to the purport and object of the 1957 Act, the said expression must be held to be of wide import.

Entry 50 of the Seventh Schedule of the Constitution of India provides for tax on mineral rights. The question which arises for consideration in these cases is as to whether the power to tax on 'mineral rights' and power to tax 'mineral' is synonymous? It is not.

Entry 50 of List II of the Seventh Schedule of the Constitution of India is as under:

"50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development."

Taxes on mineral rights must be different from taxes on minerals which are goods produced. A tax on mineral would be in the nature of excise duty. Thus, there exists a difference between taxes on mineral rights and duties of excise imposable in terms of Entry 84 of List I.

WHETHER ROYALTY IS A TAX ?:

Such a question may not strictly arise for consideration in this case as royalty is a statutory impost. Royalty stricto sensu and in common parlance may not be a tax.

Whether royalty is a tax or not is required to be deliberated upon only for a limited purpose, namely, as to whether Section 25 of the 1957 Act covers the field of taxation and not for any other purpose. We shall advert to this aspect of the matter at some details a little later.

But having regard to the definition of taxation contained in Clause 28 of Article 366 of the Constitution of India, there may not be any dispute that royalty being a statutory impost would come within the purview thereof.

Criticisms had been made as regard finding in India Cement (supra) that royalty is not a tax which in the fact situation obtaining therein to the effect that except for 5% of the land, royalty was to be paid to a private owner and, thus, the impost was not a statutory one may be correct.

A royalty may not be a tax in its usual sense as has been held in Quarry Owners' Association v. State of Bihar and Ors. [(2000) 8 SCC 655] but the question as to whether it will come within the purview of Clause 28 of Article 366 of the Constitution of India or not has not been considered in any of the judgments.

The Second Schedule appended to the 1957 Act states that the royalty would be payable at the rates specified on each tonne of coal. It is, therefore, a levy on the extraction or produce by weight. When the cess is levied on the royalty, the levy, which remains on extraction by weight, is enhanced or incremented. It is, thus, an incremental addition to the royalty. Its nature and character is the same as that of royalty. The value of the coal or for that matter of green tea has a direct nexus with the weight thereof. Thus, there may not be any significant distinction in principle between the levy in India Cement's case and levy in the present one.

The rate of royalty etc. under the 1957 Act is fixed by the statute and not by agreement between the parties. Rate of royalty may be revised subject to the limitation contained in Sub-section (3) of Section 9 of the 1957 Act in respect whereof the lessees have no say in the matter. Even the principles of natural justice are not required to be complied with. The lessee even cannot surrender the leasehold. The amount of 'Royalty' received by the State is expended as general revenue.

In D.K. Trivedi & Sons and Ors. v. State of Gujarat and Ors., [1986 (Supp.) SCC 20], it is stated:

"39. In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called surface rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition' to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty". It may, however, be that the mine is not worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called "dead rent." "Dead rent" is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed. "

But the power to fix surface rent, dead rent or royalty is conferred in terms of the 1957 Act or the rules framed thereunder and not on the basis of any State Act as the same would come within the term Mineral Development. Royalty ordinarily, although conceptualizes a contract between parties, but as by way of the 1957 Act a statutory mining lease is granted; and the terms and conditions thereof would be governed by statutes. Furthermore, a unilateral statutory power has been conferred upon the Central Government which is not the owner of the mineral right, to enhance

royalty, subject of course to the limitations provided for under Section 9 of the Act. Ordinarily, royalty would not be a tax. But in a situation of this nature and particularly having regard to the fact that the Central Government has the requisite power to fix royalty and not the owner of the mineral right, - it would be an impost within the meaning of Clause 28 of Article 366 of the Constitution of India which reads as under: "Article 366...

(28) " taxation" includes the imposition of any tax or impost, whether general or local or special and "tax" shall be construed accordingly."

The impost by reason of the impugned orders may come within the purview of the aforesaid definition being a special impost on a class of citizens who are the mining lessees. The amount collected by way of royalty is also expended like ordinary revenue. (See Corporation of Calcutta v. Liberty Cinema, Gasket Radiators (P) Ltd. v. E.S.I. Corporation and Hindustan Times and Ors. v. State of U.P. and Anr.

BRICK EARTH MATTERS Brick earth although is a minor mineral, the same under certain tenancy laws can be used by the raiyats for building their own houses.

By way of example, we may notice Sub-section (2) of Section 21 of the Chota Nagpur Tenancy Act, 1908 which reads thus:

"(2) Notwithstanding anything contained in any entries in the record of rights or any local custom or usage to the contrary, the following shall not be deemed to impair the value of the land materially or to render it unfit for purposes of the tenancy, namely :-

(a) The manufacture of bricks and tiles for the domestic or agricultural purposes of the raiyat and his family;

(b) the excavation of tanks of the digging of wells or the construction of bandhs and ahars intended to provide a supply of water for drinking, domestic, agricultural or piscicultural purposes of the raiyat and his family; and

(c) the erection of buildings for the domestic or agricultural purposes or for the purposes of trade or cottage industries of the raiyat and his family."

The State of West Bengal has issued notices for submission of return on despatches of brick earth for the previous three years. The very fact that royalty on minor mineral is required to be paid on despatches, any imposition of tax at the point of despatch must be held to be bad in law particularly having regard to the decisions of this Court in Buxa Dooars Tea Co. Ltd. v. State of West Bengal. Despatches of Brick earth from the Raiyati field for manufacture of brick having regard to the process of brick manufacturing as stated in the writ petition would be clearly ultra vires as what is being despatched is not brick earth but bricks manufactured on the raiyati lands. Bricks so manufactured cannot be the subject matter of land tax. A tax imposed on the finished product would be excise duty. Furthermore, the 1957 Act having covered the entire field, the minor minerals also

would come within the purview thereof. Once the quantification of tax is made by reference to quantity of brick-earth or brick despatched, measure of tax would be based on total value of the mineral despathed or the material despatched. It is not correct to contend that expression 'despatched' and 'removed' are synonymous. The place or point of despatch in a particular case may be different from the place wherefrom the mineral is raised. The mineral may have to be carried to a distant place where a railway siding is situate or to a place having motorable road. The cost of transport in such cases would be added to the pit head value of the mineral. In case of despatch of mineral from the despatch point as contra-distinguished from the pit head where from the mineral is removed, that is the land itself. It may be noticed that in determining the value of the mineral for the purpose of calculating the amount of cess, the cost of transport is not excluded.

For the purpose of upholding the validity of a statute, it is well- known, the doctrine of reading down thereof may not always be taken recourse to. [See Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors. Furthermore, the very fact that the methodology of royalty or cess is the same is also a relevant factor for the purpose of ascertaining the nature of tax. Tax is, thus, being imposed on the activities on the land and not on the land itself.

The measure of cess on brick earth on the despatches of bricks which is a finished product would not be on despatches of minerals but on the materials produced from minor mineral and, thus, must be held to be bad in law being beyond the purview of Entry 49 of List II of the Seventh Schedule of the Constitution. Brick earth and other minor minerals also being subject to Parliamentary control and regulation in terms of the 1957 Act, the State is denuded of its power to impose any tax thereupon or a product therefrom.

MINOR MINERAL MATTERS:

Section 3 of the U.P. Act in no uncertain terms provides for imposition of cess on mineral rights. Such a cess has been imposed subject to limitations imposed by Parliament by law relating to mineral development.

It is not in dispute that in terms of the provisions of Zamindary Abolition Act, the mineral right has vested in the State. Mineral right, therefore, cannot be subject matter of taxation as the State cannot impose a tax on itself. Once the 1957 Act has been made, the power of the State to grant lease on the terms and conditions which being provided under the statutes; the State, over and above the amount by way of royalty, surface rent, dead rent, fees etc. cannot realize any other sum. Such an impost would directly come in the way of mineral development. Rule 3 of the Special Area Development Authority (Cess on Mineral Rights) Rules, 1997 clearly states that whereas cess on coal would be Rs. 5 to 10 per ton, cess on stone, coarse sand etc. would be Rs. 2 to 5 per cubit metre. The imposition of cess on mineral right, as noticed hereinbefore, has been held to be bad in law in several decisions of this Court and several High Courts. By reason of the said Rule, even no pretence is made that cess which is a tax has been levied on the mineral and the same has got nothing to do with the land. It may be true that the authority has been conferred with the power of State in relation to a municipality to levy tax but even on that ground tax cannot be imposed unless and until the State Government is held to have the requisite legislative competence therefore. In terms of Entry 5 of the

State List, the State cannot be held to have the legislative competence to levy tax on major mineral or minor mineral, as the case may be, as the field is covered by the 1957 Act and the rules framed thereunder and, thus, it cannot delegate the said power in favour of the statutory authority.

The object underlying the legislative enactment is relevant for the purpose of upholding the validity of a statute; but before doing so what is required to be taken into consideration is the legislative competence. The court must at the outset address itself if and when such a question is raised as to whether the State legislature had the requisite competence having regard to the Parliamentary law. Once it is held that the field sought to be legislated upon by the State stands covered by a Parliamentary legislation, no further question ought to be asked. Once a liberal and wide interpretation is given to Entry 54, List I, the extent of regulation of mines and minerals development under the control of the Union must be considered keeping in view the same vis-a-vis the impact thereupon by reason of the State legislation. The State Act refers to mineral development which indisputably is the subject-matter of the 1957 Act. Section 15 of the 1957 Act confers power on the State for making rules thereunder. The State while doing so acts as a delgatee and not in its independent right of making a legislative enactment. Both power of the State are not akin to each other. They are completely different. The authority under the SADA Act might have been constituted for a laudable object but the same by itself would not be a relevant factor for coming to the conclusion that it may impose a tax on mine and mineral or a mineral right. A local authority has no right over the mineral or the mineral right. The power to impose tax upon the said authority by delegation of power or otherwise on mineral right or mine and mineral cannot be bestowed by the State. The power to tax on mineral right cannot be delegated by the State to any other authority. The said power per se does not fall within the purview of Entry 5. The statutory authorities having regard to the provisions contained in Entry 5 may be delegated with the power to impose tax on land and buildings etc. which would have a direct nexus for which such authority has been constituted but not on 'mineral right' which is vested in the State. Nobody questions or has any reason to question the validity of constitution of the authority but what is being questioned is its power to impose tax on mineral right or mines and minerals.

Apart from what has been said hereinabove, even the State is denuded of its power to impose any tax on mineral right or mines and minerals having regard to the provisions of the 1957 Act. If it is held otherwise, the same would render India Cement (supra), Central Coalfields Ltd. (supra) and a large number of decisions following the same wholly nugatory.

No material has been brought on record to justify the levy of fee or compensatory tax. In any view of the matter, if the State is denuded of its power to levy any tax the validity of the impost cannot be upheld on the ground that thereby a fee or a compensatory tax has been levied. The impost is termed as a cess on mineral right and once the validity thereof cannot be upheld under Entry 50, List II, the invalidated statute would not be validated by changing the subject-matter of the tax i.e. from mineral right to land.

Conceptually fee and tax stand on different footings; whereas the element of tax is based on the principle of compulsory exaction; the concept of fee relates to the principle of quid pro quo. The validity of tax cannot, therefore, be upheld on the ground that the same would be a fee. In any event,

for the said purpose requisite pleadings in that behalf ought to have been made by the State. The impugned cess, therefore, cannot be upheld by reference to Entry 66 read with Entry 5, List II of the Seventh Schedule of the Constitution of India.

It is beyond any cavil that the cess levied under SADA Act will have a direct effect on royalty and ultimately the value of the mineral.

It is beyond anybody's comprehension that SADA Act can be held to have been validly enacted in terms of Entry 50, List II keeping in view a large number of decisions of this Court, beginning from Hingir Rampur Coal Co.... Ltd (supra) as also several High Courts. (See for example Central Coalfields Ltd. (supra)) In that view of the matter once levy on mineral right contravenes the limits imposed by the Parliament, the question of upholding its validity in terms of Entry 50 or for that matter in terms of Entry 49, would not arise.

No argument has been advanced before us on behalf of the State of U.P. that the activities carried out by the authorities have any direct nexus with the levy of cess on coal. The High Court also did not advert to the said question. Whether there exists any given relation between amount realized and amount scent has not been demonstrated. How and in what manner the doctrine of 'quid pro quo' has been applied had neither been adverted to before us nor the State has shown that substantial amount of the fees realized are spent for special benefits of its payers which was imperative. Furthermore, the decision of the Western Coalfields Limited v. Special Area Development Authority, Korba and Anr. cannot be said to be a good law in view of the subsequent decisions of the larger bench of this Court in India Cement (supra).

The validity of a provision imposing tax on a mineral cannot be upheld in terms of Entry 5, List II of the Seventh Schedule of the Constitution of India at the instance of a statutory authority. No material having been brought on record that any services invoking the principles of quid pro quo are rendered to the owners of the mine, the impose cannot also be upheld on the ground that the same is a fee within the meaning of Entry 66, List II of the Seventh Schedule of the Constitution.

It may be noticed that a Division Bench of this Court in Jindal Stripe Ltd. and Anr. v. State of Haryana and Ors. referred the question of concept of compensatory tax which had been evolved as an exception to the provisions of Article 301 of the Constitution doubting the propositions of law enunciated in Bhagatram Rajeev Kumar v. CSI [1995 Supp. (1) SCC 673] and State of Bihar v. Bihar Chamber of Commerce.

The levy of cess in terms of SADA Act cannot be justified as a fee keeping in view the fact that the tax is sought to be imposed in terms of Entry 50 of List II of the Seventh Schedule of the Constitution of India.

Section 35 of the SADA Act clearly states in no uncertain terms that imposition of tax is subject to the regulation of mines and minerals development. It is, therefore, clearly purported to be a tax in terms of Entry 50 and not a fee; nor can it be said to be a tax under Entry 49 List I, in the aforementioned situation. The rules even make no pretence that the tax is imposed on a mineral

having regard to the fact that even mineral right has been defined under the Act.

The discussions made herein would clearly show that keeping in view the enactments made by the State legislature the rights of the zamindars, tenure-holders and intermediaries in mines and minerals had vested in the State, the impugned levy, cannot be upheld.

ENTRY 49 vis-a-vis TEA ACT, 1953 Sections 10 and 30 of the Tea Act clearly go to show that not only the production of tea by way of manufacture in a factory but also cultivation thereof is under the Union control. The fields of legislature relating to agriculture and imposition of tax on land which, as noticed hereinbefore, belong to the State legislature, have been taken away by Entry 52 List I of the Seventh Schedule of the Constitution of India read with Article 253 of the Constitution. The very fact that the preamble refers to an International Treaty itself is a pointer to the fact that the 1953 Act was enacted by the Parliament not only in exercise of its powers conferred on it under List III of the Seventh Schedule but also in terms of List II thereof.

It is, thus, not correct to contend, as has been submitted by Mr. Reddy, that by reason by Article 253 of the Constitution of India, the State's power is not denuded. Article 253 of the Constitution of India begins with a non-obstante clause and by reason of the said provision the legislative power of the State is taken over by the Parliament and once the field of legislation is taken over; (unless the Act is repealed or suitably amended by a Parliamentary Act itself), the State will have no jurisdiction to legislate in relation thereto.

Tea industry is probably the only industry which is not only a controlled industry but also a declared one. It being a controlled and declared industry and the Tea Act being a law referable to Article 253 of the Constitution of India, the State's power to make any law dealing with tea including levy of any tax on any types of tea which would include green tea leaves would completely be denuded as a tax either in terms of Entry 14, 18 or 49 would affect the said commodity.

In Maganbhai Ishwarbhai Patel v. Union of India and Anr. this Court held:

"The effect of Article 253 is that if a treaty, agreement or convention with a foreign State deals with a subject within the competence of the State Legislature, the Parliament alone has, notwithstanding Article 246(3), the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body. In terms, the Article deals with legislative power: thereby power is conferred upon the Parliament which it may not otherwise possess."

In State of Bihar and Ors. v. Bihar Chamber of Commerce and Ors., this Court held :

"...The impugned Act is also not relatable to any of the Articles 249 to 253 which are in the nature of exceptions to the normal rule that Parliament can make no law with respect to the entries in List II. If so, it follows that the State Legislatures are not denuded or deprived of their power to make a law either with reference to Entry 52 or with reference to Entry 54 in List II. That power remains untouched and unaffected. All that Parliament has said by enacting the ADE Act is that it will levy

additional duties of excise and distribute a part of the proceeds among the States provided the States do not levy taxes on sale or purchase of the scheduled commodities.

It is useful to refer at this juncture to Articles 249 and 252 of the Constitution of India. Once the Parliament in exercise of its aforementioned jurisdiction takes upon itself the field of legislation which is otherwise exclusively within the domain of the State, the latter is completely denuded of its legislative power; he effect of such Parliamentary, legislation would be the same as if the legislation had been enacted by the State Legislature.

For the purposes of the Cess Act 'owner' was with reference to a Tea Estate, the possession of which has been transferred by lease or mortgage or otherwise mean the transferee so long as his right to possession subsists. It will, therefore, appear that the cess is levied not on land as a unit by reason of general ownership of land which may belong to a legal owner but the cess may be levied even upon a person who is in possession of a Tea Estate by lease or mortgage or even by a licence or permission. If, for example, the legal owner allows somebody else to be in possession of the Tea Estate temporarily for the purpose of plucking the green tea leaves, the cess is levied upon such person not by reason of the general ownership of the land but because he is in temporary possession by a permission or licence.

It would be noticed that whereas any house or other buildings do not come within the purview of the definition of immovable properties under the Cess Act, 1880; factories or workshops or housing for the persons employed in the Tea estate had been brought under the impugned Acts. As cess is not payable under the Cess Act, 1880 in respect of land on which building and/ or factory stands; in terms of the charging Section under the impugned Acts, the same would be payable which being self-contradictory cannot be sustained. Similarly, tea bushes or standing crops, green tea leaves, would also not come within the purview of the definition of "immovable property" or land as contained in the Cess Act, 1880. It is also doubtful as to whether the Cess Act, 1880 and consequently the impugned levies would be applicable throughout, the State as the levy would be attracted at the places where "road and public work cess" is payable.

The definition of land, immovable property as contained in the Cess Act, 1880 play an important role insofar as in terms of Section 78 of the West Bengal Primary Education Act and Section 4 of the West Bengal Rural Employment and Production Act, 1976, cess would be levied on all immovable properties on which road and public work cesses are assessed. Section 5 of the Cess Act, 1880 provides that all immovable properties to be liable to road cess and public works cess. The immovable property which is, therefore, not liable to a road cess and public works cess, a fortiorari, cannot be subjected to education cess or rural employment cess.

In Buxa Dooars (supra) primary education cess and rural employment cess levied on tea had been held to be ultra vires Article 301 of the Constitution of India. The said decision applies in all fours in the present case. In Buxa Dooars (supra) it was not necessary for this Court to advert to a detailed discussion on Entry 49, List II of the Seventh Schedule of the Constitution of India having regard to the fact that its finding that in effect and substance the legislation impugned therein related to despatches of tea and, thus, the legislative source was required to be found therefore with reference

to some other entry but the State had not been able to show any. Entry 49 of List II was not held applicable as it was found that under the Tea Act the entire legislative field was covered.

GOODRICKE GROUP:

Whether the green tea leaves is marketable as such or not does not appear to be of much relevance. Such a contention has also no factual basis. It is conceded at the Bar that some tea estates may not have factories attached thereto and some factories may be functioning independent of any tea estate. Thus, those factories which process green tea leaves into tea would purchase green tea leaves. It is difficult to assume, as has been done by the Bench deciding "Goodricke Group" (supra) that green tea leaves are not marketable. It proceeded on the basis that 'green tea leaves' has no nexus with the control over production of tea. If it is held that 'green tea leaves' is a raw material for production of tea or use thereof is necessary for processing it, the same would be a marketable commodity. It appears that the Tea Board had made a scheme for grant of price subsidy to the small owners which would also be a pointer to the fact that the Tea Board exercised its control over green tea leaves.

In Goodricke Group (supra) it has, thus, wrongly been recorded that generally speaking no tea estate market green tea leaves. The writ petitioners have stated that there are about 50 Bought leaf factories in West Bengal. Bought Leaf Factories function within a statutory scheme, viz. Tea (Marketing) Control Order, 2003.

Furthermore, once it is found that the definition of 'tea' both in the Tea Act and the impugned Acts is the same, the court cannot keep the effect of Sections 25 and 30 of the Act out of its consideration for the purpose of ascertaining the true scope and purport thereof.

It is relevant to note that in Goodricke Group (supra), no opinion was expressed on Section 25 of the Act or the notification dated 30.10.1986 issued thereunder. Once it is conceded that green tea leaves would come within the purview of definition of 'tea', it is inconceivable as to how impost of excise duty on tea in terms of Sub-section (2) of Section 25 of the Act will have no bearing on the subject. By reason of Sub-section (2) of Section 25, additional excise duty is levied. Excise duty in terms of the Central Excise Act, it is trite, can not only be levied on finished products but also the products at intermediary stages.

Unfortunately, in Goodricke's case (supra), the learned Judges did not consider the matter from this angle.

'Goodricke' also runs counter to India Cement as also Kannadasan. Effect of the expression "immovable property" in Cess Act, 1880 was also not brought to its notice and had the same been done, there would not have been a conclusion that tea estate would be treated as an unit as therefrom the standing crops and structures were required to be excluded. Goodricke Group of case dos not, therefore, lay down a good law and should be overruled.

INTERPRETATION IN THE LIGHT OF INTERNATIONAL TREATIES :

It is true that the doctrine of 'Monism' as prevailing in the European countries does not prevail in India. The doctrine of 'Dualism' is applicable. But, where the municipal law does not limit the extent of the statute, even if India is not a signatory to the relevant International Treaty or Covenant, the Supreme Court in a large number of cases interpreted the statutes keeping in view the same.

A treaty entered into by India cannot become law of the land and it cannot be implemented unless Parliament passes a law as required under Article 253.

The executive in India can enter into any Treaty be it bilateral or multilateral with any other country or countries.

As regard Article 253 vis-a-vis Article 51 of the Constitution, we may notice that in the case of Kesavananda Bharati v. State of Kerala, Sikri CJ referred to Article 51 in the following words:

"It seems to me that, in view, of Article 51 of the Directive Principles, this Court must interpret language of the Constitution, if not intractable, which is after all a Municipal Law, in the light of the United Nations Charter and solemn declarations subscribed to by India."

The learned Chief Justice also relied on the observation made by Lord Denning in Corocraft v. Ram American Airways (1969) All ER 82), that it is the duty of the courts to construe our legislation so as to be conformity with International Law and not in conflict with it. It is one thing to say that legislation may be interpreted in conformity with international principles but is entirely a different thing to give effect to a treaty provision in the absence of Municipal Laws.

In Reference by President of India, it has been held that cession of national territory involve a foreign state which can be done by the Central Government in exercise of its treaty making power. (See Union of India v. Azadi Bachao Andolan 2003 (8) SCALE 287) In Vishaka and Ors. v. State of Rajasthan and Ors. it has been held :

14. The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in Minister for Immigration and Ethnic Affairs v. Teoh [128 Aus LR 353] has recognised the concept of legitimate expectation of its observance in the absence of a contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia."

(See also Liverpool & London S.P. Assn. Ltd. (supra) In Salomon v. Commissioner of Customs and Excise [(1966) 3 All E.R. 871], it was held that when the statute is in compliance with international conventions then it must be interpreted in conformity therewith MEASURE OF TAX:

It is no longer in dispute that for the purpose of determining the nature of tax, the measure with reference to which a tax is calculated is a relevant factor although not conclusive. (See R.R. Engineering Co. v. Zilla Parishad Bareilly (1983) SCC 330, Hingir Rampur Coal Co. Ltd. v. State of Orissa, Bombay Tyre International Ltd. v. Union of India, Buxa Doors Tea Co. Ltd. (supra) at 218-219 para 10 and 11] In Byramjea Jejibhoy v. Province of Bombay reported in [I.L.R. (1940) F.C.] it is stated :

"In determining the nature of the tax, consideration may be given to the standard on which tax is levied but that is not the determining fact. The measure of tax is not the sole test."

Various decisions cited before us including the 7-Judge Bench judgment in India Cement's case lead only to one conclusion that the power of the State to impose tax on land in terms of Entry 4-9 List II can be exercised when the land is taken as a unit. For the purpose of ascertaining the true nature as also the scope and extent of legislation what is required to be seen is the substance thereof.

In Buxa Dooars Tea Co. Ltd. v. State of West Bengal this Court struck down the cess levied under the earlier Acts on each kilogram of tea on the despatches from the tea estate of tea grown therein. This Court held that the standards laid down for measuring the liability under the levy must bear the relationship to the nature of the levy.

This Court observed :

"If the levy is regarded as one in respect of tea estates and the measure of the liability is defined in terms of the weight of tea dispatched from the tea estate there must be a nexus between the two indicating a relationship between the levy on the tea estate and the criteria for determining the measure of liability. If there is no nexus at all it can conceivably be inferred that the levy is not what is purports to be."

507. The tea estate comprises of any land used for cultivation of tea or intended to be used for growing plant Camelia Sinensis (L) O. Kuntze and producing green tea leaves from such plant, and shall include land comprising a factory or workshop for producing any variety of the product known as 'tea' made from the leaves of such plant and for housing the persons in the tea estate and other lands which are required for ancillary purposes.

In that case, this Court pointed out that the nexus with the tea estate is lost altogether by the provision for exemption or reduction of the levy and that throughout the nexus is confined to despatches of tea rather than related to tea estates. In that case also it was sought to be argued that the cess is a tax on land which is measured by the tea grown in the tea estate and despatched therefrom. This argument was repelled by this Court. According to this Court, there was no relationship or nexus between the tea estate and the varied treatment accorded in respect of despatches of different kinds of tea. In the present case also cess has no nexus with tea estate which comprises not only the lands on which the green tea are grown but also the factory or the workshop where the green tea leaves are manufactured into black tea, the houses of the employees where the employees reside, other construction and also on lands which are ancillary to the tea estate.

In S.C. Nawn v. W.T.O., Calcutta [1969 SCR 108] this Court was considering the validity of the Wealth Tax Act of 1957 on the ground that as if it fell within Entry 49 of List II. It was held that Entry 49 of List II contemplated a levy on land as a unit and the levy must be directly imposed on land and must bear a definite relationship thereto. As the Wealth Tax Act fell under Entry 86 of List I, it was held to be a valid piece of legislation. The said decision has been referred to with approval in India Cement (supra).

This Court also referred to the case of Second Gift Tax Officer, Mangalore etc. v. D.H. Mazareth etc. [1971 (1) SCR 200]. In that case this Court held that the tax on gift of land is not a tax imposed directly on land as a unit but only on a particular use, namely the transfer of land by way of gift.

In Bhagwan Das Jain v. Union of India, this Court made a distinction between levy on income from house property which would be an income tax and the levy on the house property itself which would be referable to Entry 49 of List II.

Land taxes are imposed in different countries. In the sovereign countries or the countries following the unitary system, the question of conflict in the legislative competence of the Parliament and the State Legislature would not arise. The dispute, however, as to whether the impost in effect and substance is an income tax or tax on land has been the subject matter of various decisions. The said decisions are pointers to the fact that in different countries in different situations levy calculated on the annual value of the land or annual rental value received different considerations at the hands of the courts.

In Cooley Taxation Vol.2 Fourth Edition, P. 558 & 564, it is stated: "558. In general in all jurisdictions real estate situated within the territorial limits of the taxing district is subject to taxation unless exempted either expressely or by implication; and by implication is meant the exemption of federal property from state taxation and the exemption of state property from state taxation, etc. Furthermore, the separate estates which different persons may own in the same land, such as where one owns the surface, another the timber growing on it, and still another the mineral underground, may each be subject to taxation."

But at Section 564, the learned author states that minerals severed and brought to the surface are taxable as personal property. (Palmer v. Corwith, 3 Chand.(Wis.) 297.), although real estate. (Emphasis supplied) It is, therefore, evident that minerals extracted and brought to the surface would be treated as personal property and, thus, cannot be the subject-matter of tax on land.

In The London County Council and Ors. v. The Attorney General, [1901 Law Report, Appeal Cases 26], (which is a converse case) the House of Lords while considering the provisions of income-tax payable while repelling a contention that the fundamental distinction between the other schedules and Schedule D, in that the words annual value are introduced, into the statute not as the subject of taxation but only as the measure of the taxation to which the property shall be subjected, observed:

"In my opinion, this construction of the section is entirely wrong. Grammatically I think it wrong. I think that the words "charged with income tax under Schedule D" mean "charged under Schedule D

with income tax," and the words "such tax" mean the tax which is called in the Act "income tax." It is said that the tax imposed on property within Schedule A is not strictly an income tax, because it is levied on the annual value of property and not on the profits received by the owner. That, no doubt, is so, and if one were writing a treatise on taxation it would be proper to refer to this distinction. But the question is, What do the words "income tax" mean in the language of the Legislature, and in this Act?" (P.44) The learned Law Davey observed:

"Again, it is said (if I understood Mr. Danckwerts rightly) that the expression "profits and gains" has a technical, or almost technical, meaning as descriptive only of the taxable subjects comprised in Schedule D. No doubt from the nature of the case the words "gains" is more frequently, though not exclusively, used in Schedule D. But, unluckily for the argument, the word "profits" is the word selected by the Legislature for describing generally the subjects of taxation under the Income Tax Acts. The title to as well the Act of 1842 as that of 1853 is "An Act for granting to Her Majesty duties on profits arising from property, professions, trades, and offices." I have already drawn attention to the language of Section 102, and to the use of the words "profits or gains arising from lands, tenements, hereditaments, and heritages" in Section 104 of the Act of 1842. The truth is that the income tax is intended to be a tax upon a person's income or annual profits, and although (for conceivable and no doubt good reasons) it is imposed in respect of the annual value of land, that arrangement is but the means or machinery devised by the Legislature for getting at the profits." (P.45) The aforementioned decision is, therefore, an authority for the proposition that tax calculated on the basis of annual value of land may in a given situation be held to be 'income tax'.

Griffith, CJ in Solomon v. New South Wales Sports Club Ltd. [19 Co. L. Rep. 698] held:

"I am unable to see any reason for thinking that the term "land tax" has ever been used in New South Wales... in any other sense then a tax on land directly imposed by the State."

The Supreme Court of United States in Hylton. Plaintiff in Error v. The United States [US SCR 1 Law. Ed. Dallas 169] while considering a question as to whether a tax upon carriages is a direct tax observed: "It was, however, obviously the intention of the framers of the constitution, that Congress should possess full power over every species of taxable property, except exports. The term taxes, is generical, and was made use of to vest in Congress plenary authority in all cases of taxation. The general division of taxes is into direct and indirect. Although the latter term is not to be found in the constitution, yet the former necessarily implies it. Indirect stands opposed to direct. There may, perhaps, be an indirect tax on a particular article, that cannot be comprehended within the description of duties, or imposts, or excises, in such case it will be comprised under the general denomination of taxes. For the term tax is the genus, and includes,

1. Direct taxes.

2. Duties, imposts, and excises.

3. All other classes of an indirect kind, and not within any of the classifications enumerated under the preceding heads. The question occurs, how is such tax to be laid, uniformly or apportionately?

The rule of uniformity will apply, because it is an indirect tax, and direct taxes only are to be apportioned. What are direct taxes within the meaning of the constitution? The constitution declares that a capitation tax is a direct tax; and, both in theory and practice, a tax on land is deemed to be a direct tax. In this way, the terms direct taxes, and capitation and other direct tax 177) are satisfied. It is not necessary to determine, whether a tax on the product of land be a. direct or indirect tax."

[P.174-175] Tax on land must be direct tax, but a tax on mineral severed from land would not be a direct tax. The question has to be considered having regard to the legislative competence as well as the nature of the product.

Normally, a tax which is measured in terms of the profit arising out lands being in nature of a tax on income would be a direct tax. A tax, however, which is levied on the product would be an indirect tax.

Excise duty is considered to be an indirect tax. When a legislation having regard to the entries in List I provides for imposition of excise duty or additional duty, the same must necessarily be held to be a 'manufactured a processed product' which by necessary implication would be deemed to be not a product of land whereupon a tax by the State can be imposed.

In State of Orissa v. Mahanadi Coalfields Ltd [1995 Supp 2 SCC 686], this Court held:

"19. The above aspect can be looked at from a different angle also. The Orissa Rural Employment, Education and Production Act, 1992 (Orissa Act 36 of 1992) provided that all lands shall be liable to the payment of tax under the Act. Land is defined in Section 2(c) of the Act to mean, "land of whatever description ... and includes all benefits to arise out of land". Lands held for carrying on mining operations would be taken in by the said definition. It is patently clear that 'minerals', which are benefits arising out of land, will be roped in within the purview of the levy under Section 3(1) read with Section 2(c) of the Act. So the charging section of the impugned Act imposes a tax on the 'minerals' also and not confined to a levy on land or surface characteristic of the land. Yet another aspect that is self-evident is that for all lands, other than mineral-bearing land, the tax is levied as a percentage of the "annual value of the land". So far as tax on mineral-bearing land is concerned, it is for the State Government to prescribe the same and it has been so fixed in accordance with Section 3(4)

(i) of the Act based on "average annual income". As stated in para 3 (supra), by adding Schedule C as per notification dated 26-9-1994 (Annexure B, p. 270 of the Paper-Book), the rates of tax are fixed for different kinds of minerals per acre, obviously based on "average annual income". With regard to coal-bearing land, as per Section 3(2)(c), the statute itself has specified the rate of tax in the Schedule at Rs. 32,000 per acre. We have already seen that lands other than mineral-bearing lands and coal-bearing lands will fall outside the purview of the impugned Act since they are dealt with under the Orissa Cess Act, 1962. It is only the "coal- bearing land" and "mineral-bearing land", as defined in Section 2(a-1) and Section 2(d), which have to bear the brunt of taxation. In the light of the above, we have no doubt in our mind that the substance of the levy under the Orissa Rural

Employment, Education and Production Act, 1992 is really on "mineral-bearing land" and "coal-bearing land".

20... We have already held that levy of tax under Orissa Act 36 of 1992 is in substance on minerals and mineral rights, which has nothing to do with surface characteristic of the land. In this view of the matter, the levy of tax, on mineral-bearing lands and coal-bearing lands, under Section 3 read with Section 2(a)(1) and Section 2(d) of the Act is beyond the competence of the State Legislature and is ultra vires."

The State of West Bengal had carried out amendments in the impugned Acts after the India Cement (supra) by inserting coal bearing lands instead and in place of coal mines but the definitions of mines within the meaning of several Parliamentary Acts including Mines Act, 1952 and the coal bearing lands are in pari materia. Even the definition of despatch under the impugned Acts and the Parliamentary Acts make no significant difference. We may notice that even in relation to mines and minerals, a cess @ 0.50 paise per tonne is levied on minerals or materials despatched from the land. These provisions go to show that the materials which are produced on the land, as for example bricks, which can be said to be a material and which has no bearing with the minerals extracted therefrom became the subject-matter of tax. The impugned Acts do not show that as to how bricks manufactured from the agricultural land by extracting brick- earth have a rational connection with the annual value of the land.

Measure of tax is an indicia for determining the character and nature of tax.

Furthermore whether an impost would be tax on 'income' or 'gross receipts' fell for consideration before the Bombay High Court in Unit Trust of India and Anr. v. P.K. Unny and Ors. [(2001) 249 ITR 612]. The High Court, inter alia, framed the following question :

"(A) Whether the interest-tax under the Interest-tax Act, 1974, is a tax on income and, if so, whether interest accruing to the UTI from loans advanced by it stands exempted in view of Section 32 of the UTI Act, 1963.

Kapadia, J.(as the learned Judge then was) speaking for the Division Bench noticed that the tax on interest under the Interest-tax Act is payable even if there is no income and that it is a tax on gross receipts of interest.

The contention raised therein which was negatived by the High Court, inter alia, was that Interest-tax Act like Income-tax Act also seeks to levy tax on gross receipts and the provisions of the Income-tax Act are in pari materia with the provisions of the Interest-tax Act. Such a contention was raised having regard to the fact that in terms of the Interest-tax Act read with the circular issued by the Reserve Bank of India, the burden of such tax would be passed on to the borrowers but CBDT issued a circular disabling UTI from recovering interest tax from the borrowers.

It will, therefore, be noticed that measure of tax was considered to be an indicia for determining the nature and character thereof, namely, as to whether such tax is an income or gross receipts of

interest.

In Hoechst Pharmaceuticals Ltd. v. State of Bihar and Ors., a question arose whether the tax on gross turnover would amount to a tax on income? Gross turnover and gross receipts are relevant for the purpose of determining the income of a person but despite the same, the measure of tax on gross receipts or gross turnover was held to be not an income so as to attract tax on income. These decision, amongst others, is indicative of the fact that the Court had considered the measure of tax for determining the nature thereof.

If a tea estate is taken to be a unit and green tea leaves are taken as the measure of tax on land comprising the Tea Estate, as contended, the levy of cess can never be uniform and will have no nexus with the land as the land used for factory, workshop and the houses for persons employed in the tea estate have no contribution to the production of tea leaves which have nexus only with the land where tea plants are grown and which produce green tea leaves. Apart from this, in a tea (c)stats, there are fallow land, nursery and other areas apart from the factory, workshop, house where cultivation of tea bushes or plant are not possible. By use of the so called measure of production of tea leaves, such lands would remain outside the levy of cess.

A distinction exists between a capital value as a measure of tax and capital value as assets. The validity of levy can be upheld where taxes on buildings are levied having regard to a percentage of capital value provided the same is not unreasonable or confiscatory in nature. Municipalities which ordinarily provide for compensatory tax may also be delegated with the power of levying tax or on building the measure whereof may be on the annual value of the building. However, what is converted into Income can reasonably be regarded as income. Save and except tax on profession or callings etc. as contained in Article 276 of the Constitution, the State has no legislative competence to impose tax on income.

Subject of a tax and the measure of a tax have some relationship to determine the question as regard character of legislation.

It is also well-settled that for the aforementioned purpose only permissible methods of valuation can be adopted. Even in D.G.Gose & Co. Vs. State of Kerala, , prima facie, it appears, such permissible method had not been adopted. The method of valuation for imposition of tax on land or building, furthermore, must be a known one. A mode to calculate tax on the basis of value of a part of land which is itself being taken away or on the basis of annual yield having regard to the definition of tea estate may not be held to be a permissible or known method of valuation.

Tax sought to be assessed on the floorage of the building and whence the amount of it is varied according to the number of buildings owned by the person charged has been held to be ultra vires. (See Bhuvaneshwariah v. State, [AIR 1965 Mys. 170]) The impost having regard to the definition of tea estate may be held to be irrational as the same tea estate may contain a large number of factories, houses and other structures with little open land for tea plantations whereas a tea estate comprising the same area may have tea plantation only with no factory or houses situate thereupon.

It is thus evident that the impugned levy has no nexus with land as such but is a tax only on production of tea leaf and hence beyond the competence of the State.

There are, thus, several reasons why the nexus between the levy and the measure of the levy is lost in the present case.

(a) "Green tea leaves" which is adopted as the measure of the levy is defined to mean the plucked and unprocessed green leaves of the tea plant. In defining "tea estate" several categories of land have been clubbed together. Firstly, there is the land used for producing green tea leaves. Secondly, there is the land intended to be used for growing tea plants (but which is not being so used). Thirdly, there is land comprised in a factory or workshop for producing commercial tea. Fourthly, there is the land comprised in housing estates within the tea estate; and fifthly, there are lands used for ancillary purposes (not production of green tea leaves).

(b) It is thus seen that the measure of tax is related to the produce of only one portion of the land purported to be defined as the unit of taxation.

(c) Additionally, the land comprised in a factory or workshop for producing commercial tea has no nexus whatsoever with the growing of tea plants because by definition, green tea leaves for the purpose of the levy means unprocessed green leaves of the tea plant. The factory and workshop land therefore has no connection whatsoever with the production of green tea leaves. Similarly, the levy on the land used for housing estates and those used for ancillary purposes also have no rational connection with the production of green tea leaves.

(d) In any event the productivity or yield value of all the areas of a tea estate other than that portion which is currently being used for cultivation of the tea plants has been totally ignored for the purpose of fixing the alleged measure of tax.

Whether the measure of tax provided in the Act bears a rational nexus with the levy itself, has been considered in the case of Buxa Dooars Tea Co. Ltd. (supra). In paras 10 & 11 of the said judgment the following propositions have been elucidated:

(a) The statutory provisions for measuring the liability on account of the levy throws light on the general character of tax.

(b) The method of determining the rate of levy would be relevant in considering the character of the levy.

(c) The standard on which the tax is levied is a relevant consideration for determining the nature of tax although it could not be regarded as the conclusive in the matter.

(d) Any standard which maintain a nexus with the essential character of the levy can be regarded as a valid basis of the assessing the measure of the levy.

It was observed:

"It is apparent that the standards laid down for measuring the liability under the levy must bear a relationship to the nature of the levy. In the case before us, however, we find that the nexus with the tea estate is lost altogether..."

Measure of tax by way of levy of cess must also have a direct nexus with the point of taxation. In the instant case, tax is levied on green tea leaves which is produced out of an activity on land and which has no bearing with the tax on land as a unit. Thus, the point at which such tax is levied may also provide for a relevant factor for the purpose of Judging the legislative competence of the State. [See Diamond Sugar Mills Ltd., and Anr. v. The State of Uttar-Pradesh and Anr.

The definition of tea is "for the purpose of the Act" which would mean for all the purposes of the Act.

In H.L. Sud. Income Tax Officer, Companies Circle 1(1). Bombay Vs. Tata Engineering and Locomotive Co. Ltd. [AIR 1969 SC 319 at 319], this Court held:

"The expression "for all purposes", used in S. 43 only indicates that when an appointment is made for a particular assessment year it is stood for all purposes as far as that assessment is concerned i.e., for all purposes for imposing tax liability, determining the quantum of the liability and for recovering it. The expression does not extend the liability to any other assessment excepting the liability for the assessment year for which the appointment is made."

In M.K. Kochu Devassy v. State of Kerala etc., it is stated: "13. We find ourselves wholly unable to accept any of the contentions. The terms of Section 2 of the 1947 Act as substituted by Section 3 of the Kerala Act are absolutely clear and unambiguous and when they lay down that the expression "public servant" shall have a particular meaning for the purposes of the Act, that meaning must be given to the expression wherever it occurs in the Act. "For the purposes of the Act" surely means for the purposes of all and not only some of the provisions of the Act. If the intention was to limit the applicability of the definition of the expression "public servant" as contended, the language sed would not have been "for the purposes of the Act" but something like "for the purposes of the Act insofar as they relate to the offences under Sections 161 to 165A of the Indian Penal Code".

[See also Ashok Leylands v. State of Tamil Nadu (C.A. Nos. 976-979 of 2001 disposed of on 7.1.2004] In Central Coalfields Ltd. (supra), it was held:

"45. In this case, it is clear that so far as imposition of cess on mines and minerals is concerned, the same has not been levied taking the land as a unit or the annual value thereof, but on the basis of royalty payable on the minerals raised therefrom or on the price of the value of coal raised from the mines which have no direct bearing with the imposition of cess on land as a unit. "

It was further noticed therein:

"47. In Commissioner of Income tax, Banglore v. B.O. Srinivasa Setty, the Supreme Court held as follows (at page 975):

"The character of the computation provisions in each case bears a relationship to the nature of the charge. Thus the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section."

Proceeded further, the Supreme Court observed (at page 975): "It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt there is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by a construction of a particular, computation provision. But the question here is whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to the fundamental integrality of the statutory scheme provided for each head."

[Emphasis supplied] Furthermore, when a provision is laid down in a statute, the same should be construed having regard to the decisions which had been rendered by this Court.

In Goodyear India Ltd. v. State of Haryana, it was held that taxing statute has to be construed strictly. It was opined that a tax imposed by the State Legislature on despatch on manufactured goods outside its territory is ultra vires.

It was further held that:

"It is well settled that while determining the nature of a tax, though the standard or the measure on which the tax is levied may be a relevant consideration, it is not the conclusive consideration. One must have regard to such other matters as decided by the Privy Council in Governor General in Council v. Province of Madras, (AIR 1956 PC 98)(supra), not by the name of tax but to its real nature, its pith and substance which must determine into what category it falls."

In Central Coalfields Ltd. (supra), it was observed: "52. From the conspectus of the aforementioned decisions it is, therefore, clear that the measure of the tax throws light on the nature of the tax and it may be considered for the purpose of finding out as to whether the impost has any nexus with the tax or not. It is evident that the true character of the levy in Cess Act is that although it appears to be tax on land, in effect, and substance, it is a tax on minerals extracted therefrom."

In Krishi Utpadan Mandi Samiti & Ors. (supra), it was held: "...It is trite that fiscal statute must not only be construed literally, but also strictly. It is further well known that if in terms of the provisions of a penal statute a person becomes liable to follow the provisions thereof it should be clear and unambiguous so as to let him know his legal obligations and liabilities thereunder. The matter may be considered from another angle, "Expressio unius (persone vel rei)est exclusio alterius", is a well known maxim which means the express intention of one person or thing is the exclusion of another.

The said maxim is applicable in the instant case. [See Khemka and Co. (Agencies) Pvt. Ltd. etc. v. State of Maharashtra etc.]. Having regard to the fact that in the event it is held that buying of seeds which is a commodity governed by a Parliamentary Act would attract payment of market fee in terms of the said Act, a conflict would arise. In ordinary parlance at particular stages in which seeds are grown from breeder seeds pay take the form of wheat but the said production which is bought by the respondents is also governed by the provisions of the Seeds Act and the Rules framed thereunder. The definition of 'seed' as noticed hereinbefore is of wide amplitude. It includes seedling of food crops. It is, thus, necessary to construe both the statutes harmoniously. Both, the Statutes must be given proper effect and allowed to work in their respective fields. Even if there is some over-lappings, the same should be ignored."

An endeavour, it is trite, shall be made to avoid such a conflict, particularly when one of the two possible constructions shall be in consonance with the purport and object of a Parliamentary Act.

In District Council of the Jowai Autonomous Distt. v. Dwet Sinah Rymbi [(l986) 4 SCC 38], royalty imposed on timber removed from private forests was held to be a tax not on land on the ground that the royalty payable has no reference to the extent of land and the nature of land and its potentialities and, thus, a tax on timber which is brought from private forests. It was held:

"18... The notification in unambiguous terms says that the royalty shall be on the squared log pines. It has no reference to the land on which those trees have grown. In pith and substance it is a tax on forest produce grown on private lands. The District Council has no power to levy such a tax on forest produce under paragraph 8 of the Sixth Schedule to the Constitution. Reliance was, however, placed on the minority judgment of Justice Sarkar in K.T. Moopil Nair v. State of Kerala in support of the plea that lands on which forests grew could be taxed under entry 'tax on lands and buildings'. The impugned levy being not a tax leved on land as we have pointed out above, the said observation in the above decision is not useful to the appellants. We may add that the very same learned Judge has observed at page 106 that no tax could be levied by a State Legislature on forests as such while tax may be levied on the land on which forests grew. But we are convinced that the levy in question is not a levy on land..."

A distinction must be borne in mind as regard the approved method of valuation for the purpose of imposition of tax on land and building. We should not be under any elusion or suffer any confusion in this behalf. Methods of determining annual value of a land or building is distinct from the value of the mineral bearing land. Annual value of a land or building is determined by applying one or the other approved or known method of valuation, but the same cannot have any application for determination of the total value of the mineral bearing land. The valuation of mineral bearing land would be dependent upon so many factors which would include the geographical condition, quality and quantity of the mineral which can be removed, the capital required to be invested and various other factors. Once the mineral is removed from the mineral bearing land, the surface may not either remain in existence and, thus, the value of the land would gradually come down. The value of a land with minerals and without minerals would be different. As and when mineral is taken out of the land, the value is diminished. The method of imposing tax with reference to the minerals produced from the land, thus, cannot be a criterion for determining the value of the land and, thus,

the said method of valuation should not made to apply which is applicable for the purpose of determining the annual value of land or building. This aspect of the matter has again not been considered in Goodricke Group (supra).

In Goodricke Group (supra) this Court noticed Ajoy Kumar Mukherjee (supra) and Kunnathat Thathunni Moopil Nair v. State of Kerala. It was held:

"It is thus clear from the aforesaid decisions that merely because a tax on land or building is imposed with reference to its income or yield, it does cease to be a tax on land or building. The income or yield of the land/building is taken merely as a measure of the tax; it does not alter the nature or character of the levy. It still remains a tax on land or building. There is no set pattern of levy of tax on lands and buildings - indeed there can be no such standardization. No one can say that a tax under a particular entry must be levied only in a particular manner, which may have been adopted hitherto. The legislature is free to adopt such method of levy as it chooses and so long as the character of levy remains the same, i.e., within the four corners of the particular entry, no objection can be taken to the method adopted. In the cases before us, the cess is no doubt is calculated on the basis of the yield - for every kilogram of tea leaves produced in a tea estate, a particular cess is levied. But that is a well - accepted mode of levy of tax on land. The tax is upon the land - upon the "tea estate" which is classified as a separate category, as a separate unit, for the purpose of levy and assessment of the said cess quantified on the basis or the quantum of produce of the tea estate. It cannot be characterized as a tax on production for that reason. As pointed out in Moopil Nair - "a tax on land is assessed on the actual or potential productivity of the land sought to be taxed". There cannot be uniform levy unrelated to the quality, character or income/yield of the land. Any such levy has been held to be arbitrary and discriminatory."

With utmost respect, the approach in the legal situations obtaining herein may not be correct. The said opinion stares on the face of India Cement(supra), Orissa Cement(supra) and P. Kannadasan (supra). India Cement (supra) came to be interpreted correctly in Kannadasan but the same learned Judge appears to have taken a different view in Goodricke, Group (supra).

The Court therein did not consider the Moopil Nair's case in its proper perspective where a flat rate of tax imposed on lands was held ultra vires Article 14 of the Constitution of India.

In Moopil Nair (Supra), this Court held:

"...Ordinarily, a tax on land or land revenue is assessed on the actual or the potential productivity of the land sought to be taxed. In other words, the tax has reference to the income actually made, or which could have been made, with due diligence, and, therefore, is levied with due regard to the incidence of the taxation. Under the Act in question we shall take a hypothetical case of a number of persons owning and possessing the same area of land. One makes nothing out of the land, because it is arid dasert. The second one does not make any income, but could raise some crop after, a disproportionately large investment of labour and capital. A third one, in due course of husbandry, is making the land yield just enough to pay for the incidental expenses and labour charges besides land tax or revenue. The fourth is making large profits, because the land is very fertile and capable of

yielding good crops. Under the Act, it is manifest that the fourth category, in our illustration, would easily be ale to bear the burden of the tax. The third one may be able to bear the tax. The first and the second one will have to pay from their own pockets, if they could afford the tax. If they cannot afford the tax, the property is liable to be sold, in due process of law, for realisation of the public demand. It is clear, therefore, that inequality is writ large on the Act and is inherent in the very provisions of the taxing section.

Moopil Nair (supra), therefore, states about the productivity as a basis for taxation and not the actual production or yield by weight. Yield from year to year would depend on a large number of factors including the expertise and financial health of the company managing the estate, costs incurred in development and maintenance of the garden and many other factors. It would not, therefore, be correct to deduce relying on or on the basis of Moopil Nair (supra) as has been sought to be done in Goodricke Group (supra) that tax on land can be measured by the "yield" of land and then translate it to the weight of the tea produced.

The yield of tea from old tea estates may be qualitatively and quantatively less than the new tea estates Quality and quantity of the yield of tea may not only depend upon the age of the tea plants but also the quality of the land and thus, the yield both quality or quantitywise would depend upon several factors, namely, quality of the soil, geographical as well as climate conditions and several other factors.

As cess has not been imposed on the leasehold in respect of sub-soil mineral right vis-a-vis surface land as a unit, the impugned tax must be held to be beyond the legislative competence of the State in terms of Entry 49 of List II of the Constitution of India. So far as tea is concerned as even agricultural activities thereof had been taken over and as in terms of Section 30 of the Tea Act the value of tea is to be determined by the Central Government, no tax can be imposed on tea which will have a direct impact on the value thereof.

As coal is also an essential commodity in terms of Essential Commodities Act, 1955, its distribution, marketing as also price is regulated and controlled by Colliery Control Order 1945 made under the Essential Commodities Act. As the price of coal is to be determined by the Central Government or the Coal Controller under the Colliery Control Order 1945 which was continued under Essential Commodities Act, 1955 and thus being covered by Entry 33 List III of the Seventh Schedule of the Constitution of India, no tax on coal can be imposed which will have a direct nexus on the value thereof. The impugned Acts must be construed having regard to the other statutes operating in the field.

A statute will not be valid unless the defects pointed out are removed. Such removal of the defects must be done keeping in view the principle of 'legislative competence'. Even the Parliament could not validate an Act which was enacted without proper legislative competence. As the measure of tax levied led to the declaration of the law invalid being in truth and substance to be beyond the competence of the State Legislature by reason of the impugned Acts, the levy cannot be said to have been revalidated. They were required to be reenacted but such reenactment must also be in tune with any or other entries made in List II of the Constitution of India.

The definition of mineral is wide. A coal washing plants or coke-oven plants are collieries or coal mines and 'washed coal', 'slurry', sludges and cokes of different grades would also come within the definition of 'coal'. Thus, the owners of the industries like coke-oven plants or coal washeries which may be set-up either within the precincts of a coal mine or outside the same, would be subject to payment of tax on their products although carrying out such operations is controlled and governed by Parliamentary regulatory statutes. Having regard to the definition of a mine vis-a-vis that of "immovable property" and "land" contained in Cess Act, 1880, reconciliation of imposition of tax on 'coal' and 'tea' is not possible. By way of example we may notice that coke produced from a coke-oven plant has specifically been included as a subject matter of tax and the weight thereof is measured on the basis that one tonne of coke would be equivalent to 11/2 tonne of coal. Coke is an industrial product, manufactured in coke-oven plants, some of which are highly sophisticated ones but even such a material has not been exempted from the purview of the statutory imposts.

As any building, factory or standing crops would not come within the purview of definition of "immovable property" under the Bengal Cess Act, 1880; "tea estate" as such having regard to its definition cannot be treated to. be one unit so as to capable of being levied any land tax. Tax on land is leviable only upon the owner of the and not upon those who have no right thereover. Tea estate as such cannot be treated as a unit under the Bengal Cess Act and consequently under the impugned statutes.

I, therefore, am of the opinion that the in the instant case tax has been imposed not on the tea estate as a unit but on the activities of land inasmuch as growing of tea would be such activity which having regard to the provisions of the Tea Act squarely falls within the purview of Entry 52, List I.

AN OVERVIEW OF SOME OF THE DECISIONS OPERATING IN THE FIELD:

We may now briefly consider amongst others the decisions, relied upon by the learned counsel appearing on behalf of different States.

In The Anant Mills Co. Ltd. etc. etc. v. State of Gujarat this Court was considering the validity of the provisions of the conservancy charges levied by Municipal Corporation wherefor classification of property had been made for the purpose of computation of conservancy charges at "higher rates on certain special classes of properties like factories, textile mills etc. vis-a-vis other properties. The questions which have been raised herein were not raised in that case. The core question which was posed therein was as to whether having regard to the affidavit filed on behalf of the respondent Corporation the classification could be upheld on the basis that total expenses to be incurred for conservancy service is required to be found out first whereafter, different rates of conservancy tax fixed for a particular class of property must be related to the cost involved in supply of conservancy service to that class. The Court held that a broad and general estimate of the cost of conservancy service and the tax receipts after taking into account the relevant factors would satisfy the requirement of law. If a broad meaning of land for the purpose of imposition of conservancy tax is required to be given, the same would include mineral which would, empower the State to levy tax on mineral. Such a finding would lead to an absurd result and make Entry 54 of List I otiose.

Therein the fact situation was absolutely different insofar as the definition of land contained in Clause 30 of Section 2 of the Corporation Act was wide enough. The Cess Act defines land and immovable property differently. Keeping in view the activities carried on the land itself although the same was beneath the surface, this Court held that the mains buried in the soil being in the possession of the company would come within the purview of the definition of land stating:

"These mains are fixed capital vested in land. The company is in possession of the mains buried in the soil, and so is de facto in possession of that space in the soil which the mains fill, for a purpose beneficial to itself. The decisions are uniform in holding gas companies to be rateable in respect of their mains, although the occupation of such mains may be de facto merely, and without any legal or equitable estate in the land where the mains lie, by force of some statue."

In State of Karnataka v. Drive-In Enterprises, [2001 (4) SCC 60], it is observed:

"Whereas in the present case, the vires of an enactment is impugned on the ground that the State Legislature lacks power to enact such an enactment, what the court is required to ascertain is the true nature and character of such an enactment with reference to the power of the State Legislature to enact such a law. While adjudging the vires of such an enactment the court must examine the whole enactment, its object, scope and effect of its provision. If on such adjudication it is found that the enactment falls substantially on a matter assigned to the State Legislature, in that event such an enactment must be held to be valid even though nomenclature of such an enactment shows that it is beyond the competence of the State Legislature. In other words, when a levy is challenged, its validity has to be adjudged with reference to the competency of the State Legislature to enact such a law, and while adjudging the matter what is required to be found out is the real character and nature of levy."

[Emphasis supplied] Imposition of cess calculated on value of coal, tea etc. for the reasons stated hereinbefore has been found to be beyond the legislative competence of the State.

Furthermore, it is, one thing to say that a land is being used as a hat as was in, the case of Ajoy Mukherjee (supra) or forest as was the case of Moopil Nair (supra) but it is another thing to say that a tax is imposed on activities of land confined to extraction of mineral which is clearly beyond the power of the State Legislature. On the same analogy levy of house tax is permissible having regard to the nature and object thereof wherefor there can be a valid classification. The annual valuation of the house on the basis of income must be considered for the purpose of quantifying the tax. But the said principle would not apply in the case of tax on production of minerals.

We, having regard to the decisions of this court in Buxa Dooars and India Cement which are directly on the point, do not think that the approach to the questions involved in the instant case should be different. In imposing tax. having regard to political or economical consideration it may be permissible to allow some concession to the small owners or income arising from the land may be taken into consideration but as would be noticed from the decisions the validity of such taxes have been upheld in relation to the land or the structures standing thereupon or a tax on circumstances and properties.

We may notice that in District Board of Farrukhabad v. Prag Dutt and Ors. [AIR 1948 Allahabad 382] a distinction was made between a tax on circumstances and properties and tax on incomes saying that the fundamental difference being that income tax can be levied for their own income and if there is no income no tax is payable. But in the case of circumstances and property tax, where a man's status has to be determined his total business turnover may be considered for purposes of taxation, though he may not have earned any taxable income. The question posed therein was considered from the angle that the business turnover may be a relevant factor for determination of man's status.

Similarly, in Assistant Commissioner of Urban Land Tax Madras and Ors., etc. v. Buckingham and Carnatic Co. Ltd. etc, it has been held that tax directly imposed on land and buildings must have definite relation thereto.

[Emphasis supplied] Herein there does not exist any such relation.

In Union Carbide India Ltd. v. Union of India, the question which arose for consideration was as to whether the Aluminium Cans which are used only for the purpose of manufacturing flashlights, would attract excise duty. The marketability of Aluminium cans came up for consideration for determination of the question as to whether any excise duty can be levied on such aluminium cans and not for any other purpose. We have noticed that green tea laves are marketable.

In D.G. Gose and Co. v. State of Kerala, while upholding the validity of the Kerala Building Tax Act, this Court considered the nature thereof, namely, it was on recurring tax, observing that the method of fixing annual value on the basis of the figures mentioned in the assessment books of local authorities is valid as adequate procedure for determination thereof had been laid down. The opinion expressed by Singhal, J. with utmost respect is doubtful.

Herein, the amount of cess required to be determined on coal and tea will have a direct nexus with the productivity thereof which has got nothing to do with annual valuation of the land as no procedure therefore can be or has been laid down. The mineral is a part of the land and thus price of a mineral, having regard to the decisions of this Court, cannot be said to be a valid method for determination of the annual value of the cost being levied.

Under Section 30 of the Tea Act, the Central Government has the power to fix the market price. Fixation of an uniform market price by the Central Government would not be possible if it is held that a different rate of cess can be levied, by different States which will have a direct impact on the sale price thereof.

In State of Rajasthan v. Vatan Medical & General Store, this Court upheld the power of the State to make a law with respect to manufacture of intoxicating liquor, which power evidently exists in the State under Entries 8, 1, 6 and 51 List II of. Seventh Schedule of Constitution of India read with Article 47 thereof. Having recorded that finding, it was observed that once the act come within the four corners of the State entries, no Central Law made further in terms of List I or List III can be held to be valid. The said decision has no application in instant case.

In Ralla Ram v. Province of East Punjab, [1948 FCR 207], annual value of the buildings and lands was to be ascertained by estimating the gross annual rent at which such land or building with its appurtenances and any furniture that may be left for use or enjoyment with such building might reasonably be expected to let from year to year. In that case, therefore, gross annual rent so fixed or expected reasonable rent was made the criteria, wherefor a procedure had been laid down. It may be noticed that in Ralla Ram (Supra), also the Federal Court stated that measure of tax throw light on the general character of the tax. The levy was upheld observing that the encroachment into the federal field is not so great as to characterize it as a colourable piece of legislation. In the instant case, however, as we have noticed hereinbefore that the encroachment of the State Legislation into the Parliamentary Legislation is grave in nature.

By reason of the impugned legislations, only the mode of collection of tax has been altered to the effect that instead and place of price of tea and on despatches of coal and tea; the same is to be levied on value thereof, excluding the elements of royalty, tax etc. Pit-head value of the coal wherefor expenses were required to be incurred which would include the income from the coal mine, whereas value of coal at the points of despatch from coal mine would also include the amount of royalty or other taxes paid thereupon. Thus, the value of coal is to be determined when the same was at the pit-head or dispatch would not make any determinative changes in the nature and character of the tax. Nor as indicated hereinbefore, makes any substantial difference in the value of coal.

In Ralla Ram (supra) citing Lord Atkin in Gallahagar v. Lynn, it was held:

"It is well established that you are to look at the true nature and character of the legislation", Russell v. The Queen, the pith and substance of the legislation. If on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorized field. The legislation must not under the guise of dealing with one matter in fact encroach upon the forbidden field. Nor are you to look only at the object of the legislator. An Act may have a perfectly lawful object, e.g., to promote the health of the inhabitants, but may seek to achieve that object by invalid methods, e.g., direct prohibition of any trade with a foreign country. In other words, you may certainly consider the clauses of an Act to see whether they are passed 'in respect of the forbidden subject."

In Ajay Kumar Mukherjee v. Local Board of Barpeta, imposition of tax on land used as a market was upheld on the ground that the use to which the land is put, can be taken into account. In the instant case, the use of land is extraction of coal or production of tea. Having regard to the Parliamentary Acts, any tax on the activities of land is forbidden. In the case of Ajay Kumar Mukherjee (Supra), the State even could impose tax in terms of Entry 26 of List II as was observed in I.T.C. Ltd. (supra).

In Goodricke Group (Supra), Jeevan Ready, J., in no uncertain terms held that overlapping of two fields may be permissible but the conflict has to be determined having regard to the fact whether it is slight as well as the basis as to whether such overlapping is on fact or is on law. Despite slight overlapping which is permissible, distinctiveness of the nature of levy under the State Act vis-a-vis the Parliamentary Act must exist. However, once an overlapping takes place in law, the State

Legislation in view of the declaration made in the Parliamentary Legislations would be unsustainable. Reasoning adopted in Goodricke Group (supra) is contrary to those assigned in Kannadasan (supra) In H.R.S. Murthy (Supra), the argument that the expression "Royalty" does not signify royalty as commonly understood but was confined to the rent payable for the beneficial use of the surface of the land was repelled stating:-

"It is therefore obvious that "royalty which follows the expression "lease amount" is something other than the return to the lessor or licensor for the use of the land surface and represents as it normally connotes the payment made for the materials or minerals won from the land."

In India Cement (supra), Murthy was overruled holding that therein this Court did not notice Section 9(2) of 1957 Act. It was held that there is a clear distinction between tax levied directly on land and tax on income arising from land.

In New Manek Chowk Spinning & Weaving Mills Co. Ltd. v. Municipal Corporation of the City of Allahabad, this Court after referring to the several decisions observed that Entry 49 of List II of the Seventh Schedule only permitted levy of tax on land and building. It did not permit the levy of tax on machinery contents (sic) in or situated on the building even though the machinery was there for the use of the building for a particular purpose. Similar view has been taken recently in Krishna Mohan (P) Ltd (supra).

Referring to a large number of decisions, some of which have been noticed herein in before, this Court in India Cement (supra) held that as no tax was leviable under the Act impugned therein, if no mining activities were carried on; hence, it was manifest that the same was not related to land as a unit which was the only method of valuation of land under Entry 49, the tax being related to minerals extracted and thus was held to be bad in law. It was held "royalty is payable on a proportionate basis of the minerals extracted. It may be mentioned that the Act does not use dead rent as a basis on which land is to be valued." Royalty may not be the produce of the land or the yield of the land, but it is directly linked with the income of the land or the value of the minerals extracted.

In Orissa Cement (Supra), Section 5(2) of the Orissa Cess Act, 1962 read as follows :

"(2) The rate per year at which such cess shall be levied shall be

(a) in case of lands held for carrying on mining operations in relation to any mineral, on such per centum of the annual value of the said lands as specified against that mineral in Schedule II;

In Orissa Cement (Supra), therefore, annual value was to be determined not only on the basis of royalty but also on the basis of the dead rent. Even then, Section 5(2) of the said Act was declared ultra vires. [See also Federation of Mining Association (supra)] Only because cess is levied on annual rental value, the same by itself would not be determinative of the character of the levy. Royalty levied on the mineral under Section 9 of the 1957 Act must be held to have a direct relation with the income derived from the mineral bearing land. Royalty is measured in terms of the amount

of coal extracted. The value of the coal will, thus, have a direct nexus on the royalty being the lessor's share on the demised land. Thus, any tax imposed on extracted minerals would be prohibited as the same will have an adverse effect/impact on the mineral development. For levying any tax on land in terms of Entry 49 of List II, it must have a direct bearing on the land as a unit.

Any attempt on the part of the State to impose tax on mineral or tea indirectly may not be construed to be a simple overlapping on the subject but overlapping in law having a direct bearing on the competing entries contained in different lists in the Seventh Schedule of the Constitution of India. India Cement has approved Buckingham and Carnatic Co. Ltd. (Supra) which is an authority for the afore-mentioned proposition but the same was sought to be distinguished in Goodricke's case, only on the premise that therein the levy was on the tea estate. In Goodricke Group (Supra), the Court did not take into consideration the question that the power to levy any cess on 'tea' has been taken away in view of the Parliamentary Legislation having regard to Article 253 of the Constitution of India.

Goodricke Group Ltd.(supra), thus, with utmost respect, cannot be said to have laid down the correct law.

The state is denuded of its power to levy any tax on 'Tea' whether processed or unprocessed as tax imposed thereupon will have a direct impact on the power of the Union Government to fix the value thereof. However, the same does not mean the State cannot impose any tax on the land. It can but the same must conform to its legislative competence vis-a-vis relevant entries of List I.

CONCLUSION:

Under the Nationalization Acts, except some collieries which belong to the companies engaged in the business of manufacture of steel, all other mines for all intent and purport belong to the public sector companies which are subsidiaries of Coal India Limited. It will be a matter of great concern if the price of coal becomes higher in the State of West Bengal than in other States.

Despite India Cement (supra) and Orissa Cement (supra) as also various decisions of this Court, tax has not been imposed taking the land as a unit. An endeavour has been made to levy cess only by changing the measures thereof. The State has not taken recourse to measures for removing the deficiencies in the Acts pointed out by this Court. By reason of the impugned amendment, the State could not have ignored various decisions of this Court, as has been pointed out in The Workmen of Firestone Tyre & Rubber Co. of India P Ltd. and others v. The Management and Ors. wherein it was held that despite insertion of the proviso appended to Section 11-A of Industrial Disputes Act the right of the employer to adduce evidence justifying his action for the first time in such a case is not taken away by the proviso to Section 11-A. It was held that legal position as existing prior thereto and changes thereby shall continue stating: "Another aspect to be borne in mind will be that there has been a long chain of decisions of this Court, referred to exhaustively earlier, laying down various principles in relation to adjudication of disputes by industrial courts arising out of orders of discharge or dismissal. Therefore, it will have to be found from the words of the section whether it has altered the entire law, as laid down by the decisions, and, if so, whether there is a clear

expression of that intention in the language of the section."

A Bench of this Court in Dharam Dutt and Ors. v. Union of India and Ors. (2003 (10) SCALE 141)observed:

"65. Welfare Association A.R.P., Maharashtra and Anr. v. Ranjit P. Gohil and Ors., is a decision to which both of us are parties. Therein we have held that it is carmissible for the legislature, subject to its legislative competence otherwise, to enact a law which will withdraw or fundamentally alter the very basis on which a judicial pronouncement has proceeded and create a situation which, if it had existed earlier, the Court would not have made the pronouncement. Very recently in People's Union for Civil Liberties (PUCL) and Anr. v. Union of India and Anr., in the leading opinion recorded by M.B. Shah, J. (the other two learned Judges having also recorded their separate but concurring opinions), the legal position has been summarized thus:-

"the Legislature can change the basis on which a decision is rendered by this Court and change the law in general. However, this power can be exercised subject to constitutional provisions, particularly legislative competence and if it is violative of fundamental rights enshrined in Part III of the Constitution, such law would be void as provided under Article 13 of the Constitution. The legislature also cannot declare any decision of a court of law to be void or of no effect."

Keeping in view that the State has no legislative competence to impose cess on mineral, the ratio of the said decision shall apply in the instant case also.

This Court while interpreting binding judgments cannot in effect and substance overrule the same or read down the principles of law enunciated therein.

SUMMARY OF OUR FINDINGS:

(i) The federalism under the Indian context points out to the supremacy of the Parliament and the legislative entries contained in different Lists of the Seventh Schedule must be construed accordingly.

(ii) The interpretation of the legislation will depend upon the legislative entries to which it relates and intent and purport of the makers of the Constitution and no principle of interpretation can be introduced to the effect that the Court should lean towards a State.

(iii) Tea and coal being subjects of great importance, the Parliament have taken over the complete control of the entire field in respect thereof and other minerals in terms of the Tea Act, 1953 and Mines and Minerals (Regulations and Development) Act respectively.

(iv) Having regard to the purport and object of the said Parliamentary Acts and the declarations contained in Section 2 of the 1957 Act and the 1952 Act, the State must be held to be denuded of its power to levy any tax on coal or tea, particularly, having regard to the provisions of Sections 9, 9A, 13, 18 and 25 of the 1957 Act and Sections 10, 13, 15, 25 and 30 of the Tea Act. Field of taxation on

mineral is also covered by Section 25 of the 1957 Act. The field of taxation under the Tea Act is specifically covered by Section 25 thereof.

(v) The State being owner of the minerals and grant of mineral right being controlled by the Parliamentary statute, the State is denuded of its power to impose any tax on mineral right in terms of Entry 50 of List II of the Seventh Schedule of Constitution of India.

(vi) Having regard to the underlying object of the 1953 Act and the 1957 Act, even if the doctrine of pith and substance is applied, it may not be possible to hold that the State legislature has only incidentally encroached upon the legislative field occupied by the Parliament.

(vii) Levy of tax on coal bearing lands and mineral bearing lands where mining operations are being carried out through the process of incline or digging pits is illegal, inasmuch as the underground mining right would be larger in area than the surface right and, thus, it is not possible to uphold the validity of, such statute with reference to the extent of the surface right as mineral is being extracted from a larger underground area. Different rights may belong to different persons over the same surface land and similarly different rights may belong to different persons in respect of or over underground rights end the impugned statutes having not made any provision of different method of levy, the impugned statutes are ultra vires.

The impugned provisions do not specify who would be liable to pay in relation to different rights and who would be considered to be the owner of the land and to what extent. If the extent of surface land is treated to be the unit, the same having regard to different mining rights granted to different persons over different minerals would all be liable to pay cess although they may not have any right over the surface at all or exercise such right thereover only over a part thereof.

As minerals bearing lands cannot be treated as an independent unit in respect of which tax can be invoked, the impugned Acts must be held to be unconstitutional.

(viii) Tax on lands and buildings in terms of Entry 49 of List II of the Seventh Schedule of the Constitution of India can be levied on land as a unit and not otherwise.

(ix) As green tea leaves is marketable, the decision in Gcodricke group (supra) having mainly been rendered on the premise that green tea leaves is not marketable must be held to have passed subsilentio and, thus, does not lay down correct legal position.

(x) In view of the definitions of 'land' and 'immmovable property' contained in the Bengal Cess Act, 1880, as no road cess or public works cess can be imposed on standing crops or any kind of structures, houses, shops or other buildings which would include factories and workshops for processing tea, no levy by way of cess can be imposed by reason of the impugned Acts either on the mining leasehold or the tea estate containing standing crops as also houses and buildings.

(xi) Measure of a tax although may not be determinative of the nature thereof, the same will play an important role in determining the character thereof particularly keeping in view the purpose and

object the Parliamentary Acts seek to achieve. In determining the legislative competence the taxing event also plays an important role.

(xii) The Tea Act having been exacted in terms of Entries 10 and 14 of List I as also Article 253 of the Constitution, the State is completely denuded of its legislative power in relation thereto. The expression 'Tea' should be given a broad meaning and Entry 52 of List I of the Seventh Schedule of the Constitution should be interpreted in relation to tea having regard to the purport and object it seeks to achieve.

For the aforementioned reasons, I respectfully dissent with the opinion of Brother Lahoti, J.

I would dismiss the appeals of the State of West Bengal and allow the writ petitions as also the appeals including C.A. No. 5027 of 2000. No costs.

ORDER Leave granted in the Special Leave Petitions.

In view of the majority opinion delivered by Hon'ble Mr. Justice R.C. Lahoti, on behalf of himself, Hon'ble the Chief Justice, Hon'ble Mr. Justice B.N. Agrawal and .Hon'ble Dr. Justice AR. Lakshmanan, the Civil Appeals, except 'Civil Appeal Nos. 1532-33 of 1993, and Writ Petitions are dismissed. Civil Appeal Nos. 1532-33 of 1993 are allowed.