SECTION -1

1. MINERAL LEGISLATION

A. Notifications /Amendments:

1. Ministry of Commerce and Industry, Department of Commerce, notification no. 02 (re-2013)/ 2009-2014, dated the 18th April, 2013: In exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No.22 of 1992) read with paragraph 1.2 of the Foreign Trade Policy, 2009-2014, the Central Government hereby notifies the following amendments in the Foreign Trade Policy 2009-2014 to be incorporated in the Annual Supplement. This shall come into force w.e.f. 18th April, 2013.

(1) In Chapter 4 a new sub-para (d) after para 4.2.6(c) of FTP is being inserted to disallow exemption from Antidumping duty and Safeguard duty once a DFIA is made transferable. The sub para (d) to be inserted would read as under:-

"Exemption from Antidumping Duty and Safeguard Duty would be available on actual user basis only, i.e. before endorsement of 'transferability'."

(2) The word "energy" in second sentence of para 4.1.3.1 of the FTP stands deleted.

(3) In para 4A.16A of FTP inserted vide Notification No.30 dated 31.01.2013 in respect of Private/Public Bonded Warehouse the minimum value addition of 5% shall be only for DTA units and not SEZ units. Accordingly, the para may be modified as under:

" Private/Public Bonded Warehouses may be set up in SEZ/DTA for import and re-export of cut and Polished diamonds, cut and polished coloured gemstones, uncut & unset precious & semi-precious stones, subject to achievement of minimum VA of 5% ***by DTA units".***

Effects of this Notification: Anti-dumping duty and safeguard duty would be leviable on goods imported against transferred DFIAs. Advance Authorisations will no more be available for import/supply of 'energy'. Value Addition in respect of SEZ (in respect of para 4A.16A of FTP) would be as per SEZ Act.

Source: The Gazette of India, dt. 22.08.2013

2. Ministry of Commerce and Industry, Department of Commerce notification no. 02 (re-2013)/ 2009-2014, dated the 18th April, 2013: In exercise of powers conferred under Paragraph 2.4 of the Foreign Trade Policy, 2009-2014, the Director General of Foreign Trade hereby notifies the following amendments in Chapter 4 of the Handbook of Procedures (Volume I). This shall come into force from 18th April, 2013.

1. In order to facilitate disposing of pending requests of the exporters by RAs, it has been decided to amend Para 4.20.5 of HBPv1 which reads as under:-No clubbing of authorisations issued on or before 31st March, 2004 shall be allowed. Further, no clubbing of authorisations covered under Appendix 30A of the HBPv1 or authorisations with less than 18 months EOP shall be allowed. The amended Sub-para shall read as under [new portion in bold letters]:-

   "No clubbing of authorisations issued on or before 31st March, 2004 shall be allowed. Further, no clubbing of authorisations covered under Appendix 30A of the HBPv1 or authorisations with less than 18 - month EOP shall be allowed. However, requests for clubbing of Advance Licenses/Authorisations, issued between 1.4.2002 and 31.5.2012, and received by RAs on or before 4.6.2012 may be disposed

of as per the provisions of HBP-v1 prior to issue of Revised Edition/Annual Supplement dated 5.6.2012,provided conditions stipulated in Public Notice No. 79 dated 13.10.2011 are adhered".

2. To rectify the omission under Appendix 21 C relating to PROCEDURE OF ELECTRONIC FUND TRANSFER in NOTE 3, the word 'DFIA' is being inserted after the words "Advance Authorisation' in the 1st sentence of the NOTE.
Effect of this Public Notice: This would facilitate disposal of pending requests the exporters for clubbing of advance authorisations where applications have been received upto 4.6.2012. The second para would facilitate issue of duplicate authorisation in lieu of cancelled authorisation after payment of only Rs.200/- as additional application fee as in case of other authorisations.

Source: The Gazette of India, dt. 22.08.2013

3. Ministry of Commerce and Industry (Department of Commerce), notification, F.No.01/94/180/395 – Foreign Trade Policy/AM13/PC-4.- In exercise of powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (No.22 of 1992) read with paragraph 1.2 of the Foreign Trade Policy, 2009-2014, the Central Government hereby notifies the following amendments in the Foreign Trade Policy 2009-2014 to be incorporated in the Annual Supplement. This shall come into force w.e.f. 18th April, 2013.

(1) In Chapter 4 a new sub-para (d) after para 4.2.6(c) of FTP is being inserted to disallow exemption from Anti dumping duty and Safeguard duty once a DFIA is made transferable. The sub-para (d) to be inserted would read as under:-

"Exemption from Anti-dumping Duty and Safeguard Duty would be available on actual user basis only, i.e. before endorsement of 'transferability'."

(2) The word "energy" is second sentence of para 4.1.3.1 of the FTP stands deleted.

(3) In para 4A.16A of FTP inserted vide Notification No.30 dated 31.01.2013 in respect of Private/Public Bonded Warehouse the minimum value addition of 5% shall be only for DTA units and not SEZ units. Accordingly, the para may be modified as under:

"Private/Public Bonded Warehouses may be set up in SEZ/DTA for import and re-export of cut and Polished diamonds, cut and polished coloured gemstones, uncut and unset precious and semi-precious stones, subject to achievement of minimum VA of 5% by DTA units".

Effects of this Notification: Anti-dumping duty and safeguard duty would be leviable on goods imported against transferred DFIAs. Advance Authorisations will no more be available for import/supply of 'energy'. Value Addition in respect of SEZ (in respect of para 4A.16A of FTP) would be as per SEZ Act.

Source: The Gazette of India: extraordinary, part I, section-I dt. 18.04.2013

4. Ministry of Finance (Department of Revenue), Directorate General of Safeguards, Customs and Central Excise, Corrigendum, G.S.R.346(E).- The product under consideration has been duly discussed in para 31 of the Final Findings and, therefore, the following substitution in the Final Findings of the Safeguards investigation notification issued vide F.No.D-22011/6/2012 dated 25.5.2013 is warranted.

Accordingly, in the last line of para 70 (Recommendation) of the final findings i.e. "(same as in provisional findings/corrigendum)" is substituted by the following:

"[i.e. "Hot Rolled Flat products of Stainless Steel-304 grade (upto a maximum width of 1625 mm) encompassing all austenitic grades having minimum Nickel (Ni) content of 6%, compulsorily containing chromium with or without the presence of other alloying elements like molybdenum, titanium, etc".

These products are classifiable or imported under sub-headings nos. 72191111, 72191112, 72191190, 72191200, 72191300, 72191400, 72192111,72192112, 72192121, 72192122, 72192131, 72192132, 72192141, 72192142, 72192190, 72192211, 72192212, 72192219, 72192291, 72192292, 72192299, 72192310, 72192320, 72192390, 72192411, 72192412, 72192413, 72192419, 72192421, 72192422, 72192423, 72192429, 72192490, 72201110, 72201121, 72201122, 72201129, 72201190, 72201210, 72201221, 72201222, 72201229, 72201290 of the Customs Tariff Act, 1975 (HS code is only indicative and the product description shall prevail in all circumstances)]".

Source: The Gazette of India: extraordinary, part II, Section-3 (i) dt. 30.05.2013

5. Ministry of Commerce and Industry (Department of Commerce),Notification, S.O.1999(E).- In exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No.22 of 1992) read with paragraph 1.2 of the Foreign Trade Policy, 2009-14, the Central Government hereby notifies the following amendments in the Foreign Trade Policy (FTP) 2009-14.

Para 4A.2.1 and Para 4A.2.2 of FTP are being amended to allow reduction in size of diamond from '0.25 carat and above' to '0.10 carat and above' for certification by authorized laboratories in India and abroad (and re-import duty free in case of export after certification). After amendment the opening portion of the amended paras 4A.2.1 & 4A.2.2 would read as under:-

"4A.2.1 Following are authorized laboratories for certification/grading of diamonds of 0.10 carat and above....."

"4A.2.2 An exporter (with annual export turnover of Rs.5 crore for each of the last three years) may export cut & polished diamonds (each of 0.10 carat or above) to any of the above agencies/laboratories with re-import facility at zero duty within 3 - month from the date of export."

Effect of this Notification: Cut & polished diamonds of 0.10 carat or above can be exported and thereafter re-imported duty free after certification by authorized laboratories. Earlier this was allowed for diamonds of size 0.25 carat and above only.

Source: The Gazette of India: extraordinary, part II, Section-3 (ii) dt. 03.07.2013

6. Ministry of Mines, notification, S.O. 2205(E).- Whereas, in exercise of the powers conferred by Section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central Government vide notification of the Government of India in the Ministry of Mines, number S.O.2817(E), dated the 22nd November, 2010, published in the Gazette of India, Extraordinary, Part II Section 3, Sub-section (ii), dated the 22nd November, 2010, appointed a Commission of Inquiry consisting of Justice M.B.Shah, retired Judge of the Supreme Court of India for the purpose of making an inquiry into a definite matter of public importance, namely, mining of iron ore and manganese ore in contravention of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Forest (Conservation) Act, 1980 (69 of 1980), the Environment (Protection) Act, 1986 (29 of 1986) and other Central and State Acts and the rules and guidelines issued thereunder and raising, transportation and exporting

of such ores without lawful authority at various places within the country and to submit its report to the Central Government as soon as possible but not later than eighteen months from the date of its first sitting;

And whereas, the first sitting of the Commission was held on the 17th day of January, 2011 and the Commission had to submit its Report on or before the 16th day of July, 2012;

And whereas, on the request of the Commission, the tenure of the Commission was extended for a period of one year from the 17th July, 2012 to the 16th July, 2013 vide notification number S.O.1738(E) dated the 3rd August, 2012;

And whereas, the Commission has requested for further time for completion of its report;

Now, therefore, in exercise of the powers conferred by Section 3 of the Commissions of Inquiry Act, 1952, (60 of 1952), the Central Government hereby extends the term of Justice M.B.Shah Commission of Inquiry for a period of three months from the 17th July, 2013 to the 16th October, 2013 to finalise its Report(s).

Source: The Gazette of India: extraordinary, part II, Section-3 (ii) dt. 19.07.2013

7. Ministry of Environment and Forests, New Delhi, the 22nd August, 2013, S.O.2558 (E). - Whereas by notification of the Government of India in the Ministry of Environment and Forests number S.O.20 (E), dated the 6th January, 2011 (hereinafter referred to as the said notification), the Central Government declared certain areas as Island Protection Zones and restrictions were imposed on the setting up and expansion of industries, operations and processes in the said Zone;

And whereas, the Andaman and Nicobar Administration of the Union territory of the Andaman and Nicobar Islands has drawn the attention of the Central Government to the difficulties being faced by the local population of the said territory due to lack of alternative construction materials available in the Islands and the restrictions imposed by the aforesaid notification on mining of sand in the Coastal Regulation Zone in the said territory;

And whereas, the Hon'ble Supreme Court *vide* its Order dated the 7th May, 2002 in Writ Petition (Civil) No.202 of 1995 had passed Orders on mining of sand in Andaman and Nicobar Islands;

And whereas, the Central Government is of the opinion that it is in public interest to dispense with the requirement of notice under clause (a) of sub-rule (3) of rule 5 of the Environment (Protection) Rules for amending the said notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) and sub-rule (4) of Rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following amendments in the said notification, namely:-

In the said notification,

(1) in paragraph I, in item B, after the words "Greater Nicobar", the words "Baratang, Havelock, Little Andaman , Car Nicobar, Neil and Long islands" shall be inserted.

(2) in paragraph III, in item D,

(a) under heading 3, relating to 'ICRZ-II', after sub-item (a), the following proviso shall be inserted , namely:-

"Provided that the NDZ for the development of eco-tourism activities shall be 50 m. and the Andaman and Nicobar Administration shall ensure that the livelihood and concerns of the fishing community are fully protected. When the hazard line is delineated and if it falls beyond 50 m, the hazard line shall be considered as the NDZ limit."

(b) under heading 5, relating to 'period for which ICRZ and IIMPs shall be valid', for sub- item (ii), the following sub- item shall be substituted, namely:-

"(ii) the Coastal Zone Management Plans already approved by the Ministry of Environment and Forests shall be used till the 31st January, 2014.";

(c) under heading 7, relating to 'The following activities prohibited in the islands of A&N and Lakshadweep', after sub-item (xvi), the following sub-item shall be inserted, namely:- "(xvia) mining of sand for construction purpose:

Provided that the mining of sand shall be permitted in identified non eco-sensitive and approved sites, subject to the following conditions, namely:-

(i) mining of sand shall be permitted only in identified and approved sites (accreting areas identified by the Institute for Ocean Management (IOM), Chennai), for construction purpose by A&N CZMA and they may consider permission based on mining plans and shall stipulate sufficient safeguards to prevent damage to the sensitive coastal eco-system including corals, turtles, crocodiles, birds nesting sites and protected areas;

(ii) the total quantity of sand to be mined shall be fixed taking into consideration the Order of Hon'ble Supreme Court dated the 7th May, 2002 in Writ Petition (Civil) No.202 of 1995;

(iii) the sand mining shall be monitored by a Committee constituted by the Lieutenant Governor of the Andaman and Nicobar Islands under the Chief Secretary, Andaman and Nicobar Administration consisting of (i) the Chief Secretary, Andaman and Nicobar Administration (2) the Secretary, Department of Environment (3) the Secretary, Department of Water Resources (4) the Secretary, Andaman Public Works Department (5) representative from the Regional Office of the Ministry of Environment and Forests, Bhubaneshwar and (6) representative of a Non-Governmental Organisation based at Andaman and Nicobar."

[No. 12-3/2008-IA.III] (Maninder Singh) Joint Secretary to the Government of India

Source: The Gazette of India: extraordinary, part ii, Section-3 (ii) dt. 22.08.2013

8. Ministry of Commerce & Industry, Department of Commerce, notification no. 36 (re-2013)/2009-2014, dated the 26th August, 2013 (**Policy for allocation of quota for import of Rough Marble Blocks for Indian companies investing abroad in marble mining, for the year 2013-14.),** S.O.2608 (E): In exercise of powers conferred under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 as amended, read with paragraph 2.1 of the Foreign Trade Policy, 2009-14, the Central Government hereby makes the following amendments in Schedule-I (Imports) to the ITC (HS) Classifications of Export and Import Items:

2. Import Licensing Note No. (5) inserted at the end of Chapter 25 through Notification No.20 of 9th October 2012, is amended to read as :

"5. Facility for Indian companies who have invested in Mining abroad.
This will be subject to conditions laid down as under:

5(a): Eligibility;

i. Mining company where such investment is made must be a 100% subsidiary of the Indian company.

ii. Minimum investment should be Rupees 10 crore as on 31.3.2013 and is subsisting.

iii. Such investment should only be in plant and machinery. No plant and machinery on leased basis will be considered.

iv. The overseas mining company should be operational and have the operating license in its own name.

(b) Quantity to be permitted;

i. Only marble blocks produced from its own quarries overseas shall be allowed for import.

ii. The total annual import quantity will be limited to 1 lakh MT .

iii. The quantity to be allocated for import per applicant shall not exceed 30,000 MT or the total quantity of marble mined and sold from its overseas mines in the previous financial year, whichever is less. (Reference to financial year would be Indian financial year i.e. 1st April 2012-31st March 2013)

iv. If the quantity to be imported by the eligible applicants exceeds 1 lakh MT, then allocation will be on a pro rata basis. Distribution of pro rata allocation will be on the basis of total sale of quantity produced in the previous financial year from its mines overseas. Quantum of sale shall be certified by an independent Chartered Accountant and will be accompanied with annual accounts of foreign mines (subsidiary of Indian Company).

(c) Filing of Application;

Applications should reach DGFT (HQ) office at Udyog Bhavan, New Delhi before 5 pm on 5th September 2013.

(d) Floor Price;

Such imports shall be subject to a floor price of US$ 325 per Metric Tonne (MT) .

(e) ITC HS Codes;

Such imports shall be permissible under ITC HS Codes 25151100 and 25151210.

(f) Actual User Condition;

All authorisations shall be subject to actual user condition.

(g) Monthly Return;

Authorisation holders shall file monthly returns regarding imports made by them, to the concerned Regional Authority of DGFT by the 15th of each succeeding month in which authorisation is obtained (for example if a authorisation is obtained on 13th September, the authorisation holder will file monthly return by 15th of October and for each month thereafter). This is a mandatory requirement.

(h) Validity of Import authorisation;

Authorisation for Import of marble will have a validity of 12 - month from date of issue.

3. Effect of this notification:

Import Policy for allocation of quota for import of Rough Marble Blocks by Indian companies investing abroad in marble mining has been notified with an annual quota of 1 lakh MT.

Source: The Gazette of India: extraordinary, part ii,Section-3 (ii) dt. 26.08.2013

9. Ministry of Commerce & Industry, Department of Commerce, notification no. 37 (re-2013)/2009-2014, dated: 26th August, 2013 (Policy for issue of import licenses of Rough Marble and Travertine Blocks for the Financial year 2013-14.), S.O. 2609(E): In exercise of powers conferred under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 as amended, read with paragraph 2.1 of the Foreign Trade Policy, 2009-14, the Central Government hereby makes the following amendments in Schedule-I (Imports) to the ITC (HS) Classifications of Export and Import Items:

2. Import Licensing Note No. (2) inserted at the end of Chapter 25, will be amended to read as : "Import of rough marble blocks will be subject to conditions laid down in Notification No.37 dated 26th August, 2013."

3. Conditions for import of marble.

A. The following Policy provisions will be applicable for import of Rough Marble Blocks and Travertine for the financial year 2013-14. This will supersede earlier Policy /Guidelines for issue of import licenses of Rough Marble Blocks.

B. Attention is invited to ITC HS Codes 25151100 and 25151210 indicated in Schedule-1 (Imports) of ITC (HS) Classifications of Export and Import Items. As per the provisions contained therein, import of Marble and Travertine – Crude or Roughly trimmed and merely cut, by sawing or otherwise, into blocks of a rectangular (including square) shape is restricted and subject to import licensing procedures.

C. The applications for import license for import of rough marble blocks and travertine under the above mentioned ITC HS Codes will be considered in the following manner: -

I. Eligibility of the units will be decided based on the following three criteria:

a. Units who have installed marble gang saw machine (except 100% EOUs and units in SEZ) on or prior to 31.3.2013. The marble gang saw machine shall be in the name of the applicant only. No gang saw on "Lease Basis" shall be considered for the purpose of allocation of import entitlement.

b. The Units should have been in operation for 5 years on or prior to 31.3.2013.

c. All eligible units as per (a) above should have cumulative turnover of atleast Rupees Five crore (Rs 5 Crore) during the 5 - year period i.e. financial years 2007-08 to 2011-12 irrespective of whether it is from domestic or foreign sources in respect of processed marble slabs/tiles only.

II. Floor Price-

Licenses for import of crude or roughly trimmed marble and travertine blocks or merely cut, by sawing or otherwise into blocks of a rectangular (including square) shape shall be subject to a floor price of US$ 325 per Metric Tonne (MT), which shall be endorsed on all licenses.

III. Entitlement:

The total import of Rough Marble and Travertine blocks under ITC HS Codes 25151100 and 25151210 will be subject to a ceiling of 6 lakh MT for the whole of the licensing year, 2013-14. Eligible units will be entitled for an import license on the basis of cumulative turnover (indigenous or foreign) of atleast Rupees 5 crore of processed marble slabs/tiles only, over the previous five financial years 2007-08 to 2011-12. The quantity so calculated will however be subject to the overall ceiling of 3000 MT for the first gang saw and 1500 MT for every subsequent gang saw.

IV. Actual User Condition:

All licenses shall be subject to actual user condition. Modalities for submitting hard copies of the applications is attached as Annexure 1 to this notification.

V. Monthly Return

License holders shall file monthly returns regarding imports made by them, to the concerned Regional Authority of DGFT by the 15th of each succeeding month in which license is obtained (for example if a license is obtained on 13th September, the license holder will file monthly return for imports made in September by 15th of October and for each month thereafter by the 15th). This is a mandatory requirement.

VI. Validity of Import licences

Licenses for Import of Marble and Travertine will have a validity upto 30th September 2014.

4. Effect of this notification:

Import policy of Rough Marble and Travertine blocks for the year 2013-14 has been notified with a quota of 6 lakh MT and an MIP of US$ 325 per MT .

Annexure-1 to Notification No: 37 (RE-2013)/2009-14 Dated: 26th August, 2013

Modalities for submitting applications for grant of quota for import of rough marble blocks

1. Eligible applicants will submit hard copies of their application, in the relevant Aayaat Niryaat Form, along with the documents prescribed therein, to concerned RA for import of rough marble blocks for the financial year 2013-14. RA will then forward the applications to DGFT HQ for scrutiny and allocation of quota. Calendar of events is attached as Annexure 2 to this Notification.

2. The following conditions would need to be followed and documentary proof submitted to concerned RA along with the application for grant of quota :-

    a. The Marble gang saw in the Unit should be in the name of the Unit and established on or prior to 31.3.2013, as certified by State Industry Department (District Industry Centre). The gang saw should not be 'on Lease' from any other Party. The marble gang saw machine should have linear movement and should have minimum 60 steel blades impregnated with diamond segments and be used only for cutting marble blocks into slabs;

b. SSI/SIA Registration Certificate should show the Unit being in operation on or prior to 31.3.2008;

c. The list of equipment / capital goods (other than Marble gang saw) set up by the applicant in the Unit for processing marble slabs / tiles should be prior to 31.3.2008, as per Balance Sheet as on 31.3.2008, duly certified by a Chartered Accountant;

d. Income Tax Return for the financial year 2007-08 indicating processing of marble by the Unit duly certified by a Chartered Accountant;

e. A Certificate indicating domestic/foreign sales turnover of marble slabs / tiles of years 2007-08, 2008-09, 2009-10 , 2010-11 and 2011-12; and

f. A copy of Chartered Accountant certified statement of accounts, filed along with Balance Sheet to Income Tax authorities for each of the years i.e. 2007-08, 2008-09, 2009-10 , 2010-11 and 2011-12 (in order to prove cumulative turnover from domestic or foreign sources) of marble slabs / tiles of atleast Rs. 5 crore in the last 5 - year).

g. The sale against Form H and other relevant Forms, job work income earned by any unit sawing marble blocks of third parties into slabs/tiles and the amount of excise duty, service tax and sales tax/VAT paid on such indigenous sales turnover of marble slabs/tiles may also be included for calculating indigenous sales turnover of the applicant. An applicant would need to submit certified copies of VAT/Sales Tax returns filed by the applicant for each of the 5 financial years indicating the indigenous sales turnover of marble slabs/tiles along with the income tax returns for the same period. No trading turnover shall be considered.

h. With regard to calculation of indigenous sales turnover, it is clarified that the turnover will include the net sales after deducting the sales returns from the gross sales. It is also clarified that the turnover of the applicant only shall be taken into consideration and the turnover of group concerns/ sister concerns/ subsidiaries etc. shall not be counted for calculating the turnover.

i. The applicant must not be on DEL (Denied Entities List).

j. In case any applicant/ firm is found to have furnished wrong/ false information or made any misrepresentation, then it shall be debarred from the allocation for import of marble and also liable for penal action under the provisions of FTD&R Act 1992,as amended.

3. The last date for receipt of hard copy of application with complete documents with RA shall be 5th September, 2013.

Annexure-2 to Notification No: 37 (RE-2013)/2009-14 Dated : 26th August,2013

CALENDAR OF EVENTS

1. Notification to be issued on	26th August, 2013
2. Receipt of Application in RA	Upto 5th September, 2013
3. Forwarding of Applications to DGFT HQ by RA's	Upto 9th September, 2013
4. Declaration of Allocation	19th September, 2013
5. Issuance of Licences	20th to 25th September, 2013

Source: The Gazette of India: extraordinary, part ii, section-3 (ii) dt. 26.08.2013

10. Ministry of Commerce & Industry, notification no. 38 (re-2013)/2009-2014, the 26th August, 2013 (Import policy of Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially coloured granules, chippings and powder, of natural stone (including slate)), S.O.2610(E): In exercise of the powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with Para 2.1 of the Foreign Trade Policy, 2009-2014, the Central Government hereby makes the following amendments in the Schedule 1 (Imports) of the ITC (HS) Classifications of Export and Import Items.

2. Existing policy conditions (prior to this amendment) as available at page 545-546, for the ITC HS Codes 68022310, 68022390, 68022900, and 68029300 of Chapter 68 of ITC(HS) Classifications of Export and Import Items are extracted below (earlier policy conditions):

   "Import permitted freely "

3. After amendment the entry would read as below (amended policy conditions): "Import permitted freely provided cif value is US$ 80 & above per square meter."
4. The effect of this Notification :-

   Now the import of items under the ITC HS Codes specified above is permitted freely if cif value is US$ 80 and above per square meter.

Source: The Gazette of India: extraordinary, part ii, Section-3 (ii) dt. 26.08.2013

11. Ministry of Commerce & Industry, Department of Commerce, notification no. 40 (RE–2013)/2009-2014, dated 6th september, 2013 (Non-insistence on sequencing of import of gold being followed by export of gold jewellery/articles of gold.), S.O.2709(E): In exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), read with paragraph 2.1 of the Foreign Trade Policy, 2009-2014, as amended from time to time, the Central Government hereby notifies the following:

2. Chapter 71 of ITC(HS) 2012 Schedule 1 stipulates that import of gold is 'subject to RBI regulations'. The Reserve Bank of India has issued certain guidelines including A.P. (DIR Series) Circular No.25 dated August 14, 2013 on the operational aspect of the scheme of import of gold. Para 2(f) of the circular No.25 states:

   "(f) Any authorization such as Advance Authorization / Duty Free Import Authorization (DFIA) is to be utilized for import of gold meant for export purposes only and no diversion for domestic use shall be permitted."

3. This condition (f) is getting interpreted as every import under Advance Authorisation /DFIA has to be followed by a corresponding export. Normally import precedes export under AA/DFIA but in certain cases export may precede import. It is necessary that every import under AA/DFIA must be duly accounted for by corresponding exports without insisting on the sequence: import preceding export.

4. Accordingly, import of gold under AA/ DFIA would have a corresponding export but not necessarily import first and export later.

5. Effect of this Notification: Import of gold under AA/ DFIA would not necessarily be followed by export but each import has to be accounted for.

Source: The Gazette of India: extraordinary, part ii, Section-3 (ii) dt. 06.09.2013

12. Ministry of Environment and Forests notification, New Delhi the 9th September. 2013, S.O. 2731 (E): In exercise or the powers conferred by sub-section (J) and clause (v) of sub section (2) of Section 3 or the Environment (Protection) Act,1986 (29 of 1986) read with sub- rule (4) of rule 5 or the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendment to the notification of the Government of India, in the Ministry of Environment and Forests number S.O. 1533(E), dated 14th September. 2006 after having dispensed with the requirement of notice under clause (a) of sub-rule (3) or the said rule 5 in public interest, Namely:

In the said notification, in the Schedule, for item I (a) and entries relating thereto, the following item and entries shall be substituted , namely:-

(1)	(2)	(3)	(4)	(5)
"1(a)	(i) Mining of minerals	≥50 ha of mining lease area in respect of non coal mine lease. >150 ha of mining lease area in respect of coal mine lease. Asbestos mining Irrespective of mining area.	<50 ha of mining lease area in respect of minor minerals mine lease; and ≤ 50 ha ≥ 5 ha of mining lease area in respect of other non-coal mine lease. ≤150 ha>5ha of mining lease area in respect of coal mine lease.	General Conditions shall apply except for project or activity of less than 5 ha of mining lease area for minor minerals: Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded environment clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha. **Note:** (i) Prior environmental clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal. Further, a period of two years with effect from the 4th April, 2011 is provided for obtaining environmental clearance for all those mine leases, which were operating as on the 4th April, 2011with requisite valid environmental clearance and which have fallen due for renewal on or after 4th November. 2011:

	(ii) Slurry pipelines (coal lignite and other ores) passing through national parks or sanctuaries or coral reefs, ecologically sensitive areas.	All projects.		(i) Provided that no fresh environmental clearance shall be required for a mining project or activity at the time of renewal of mining lease, which has already obtained environmental clearance under this notification. (ii) Mineral prospecting is exempted".

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide notification number S.O. 1533(E). dated the 14th September, 2006 and subsequently amended as follows:-

1. S.O. 1737 (E) dated the 11th October, 2007;
2. S.O. 3067 (E) dated the 1st December, 2009:
3 S.O. 695 (E) dated the 4th April, 2011:
4. S.O. 2896 (E) dated the 13th December, 2012; and
5. SO 674 (E) dated the 13th March. 2013.

Source: The Gazette of India: extraordinary, part ii, Section-3 (ii) dt. 09.09.2013

13. Ministry of Finance (Department Of Revenue) (Central Board of Excise and Customs), Notification No. 91/2013 – Customs (N. T.), 29th August, 2013, S.O. 2761 (E): In exercise of the powers conferred by sub-section (2) of Section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise & Customs, being satisfied that it is necessary and expedient so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), **No. 36/2001-Customs (N.T.), dated the 3rd August, 2001**, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:-

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted namely:-

"TABLE-1

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value US $ (Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	808 (i.e. no change)
2	1511 90 10	RBD Palm Oil	851(i.e. no change)
3	1511 90 90	Others – Palm Oil	830(i.e. no change)
4	1511 10 00	Crude Palmolein	854(i.e. no change)
5	1511 90 20	RBD Palmolein	857(i.e. no change)
6	1511 90 90	Others – Palmolein	856(i.e. no change)

7	1507 10 00	Crude Soyabean Oil	928(i.e. no change)
8	7404 00 22	Brass Scrap (all grades)	3743(i.e. no change)
9	1207 91 00	Poppy seeds	2648(i.e. no change)

TABLE-2

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $)
(1)	(2)	(3)	(4)
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 321 and 323 of the **Notification No. 12/2012-Customs dated 17.03.2012** is availed	461 per 10 grams
2	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 322 and 324 of the **Notification No. 12/2012-Customs dated 17.03.2012** is availed	803 per kilogram

TABLE-3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $ Per Metric Tons)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	1870 (i.e. no change) "

Source: The Gazette of India: extraordinary, part ii, Section-3 (ii) dt. 09.09.2013

B. Court Decisions:

1. M/s. Madhusudan Builders & Developers (P) Ltd, Petitioner v. the State of Bihar (now State of Jharkhand) Respondent, AIR 2013, Jharkhand 45, Vol. 100, part 1192, April 2013.

Subject: Challenging the imposition of royalty on consumption of Minor minerals.

Facts:

Petitioner's company is engaged in developing lands and construction of multi-storeyed buildings, for which it has to use building sand, grabble, bricks, stones and chips. These are admittedly the goods covered under the provisions of the then Bihar Minor Minerals Concession Rules, 1972 and these goods are subject to payment of royalty, etc. However, since the petitioner is a private developer and contractor of multi-storeyed buildings and he is not covered under the definition of "Works Contractor" as defined in Explanation (ii) to sub-rule 10 of Rule 40 and is not dealing with the Department of Central or State Government or Company, Corporation, Undertakings, Autonomous body of the Government, who engages works contractors for any kind of construction on their behalf, and further, the petitioner is neither a lessee, nor a licensee under the above Rules of 1972, therefore, it could not have been asked to pay royalty by invoking sub-rule 10 of Rule 40 of Rules 1972. It is submitted that the State Government issued a communication dated 17th December, 1997 asking all the Deputy Commissioners and concerned Officers of the Government Department that they are taking works contract from the works contractors but they are not taking care of getting royalty. In view of the said circular as well as in view of the decision of this Court delivered in the case of **M/s. Madhusudan Choudhary Vs. State of**

Bihar & Ors (1996(1) PLJR 723), the petitioner was asked to submit all the relevant documents with respect to the materials used by the petitioner for construction of buildings/apartments. The petitioner produced the documents to show that it has used the minor minerals which were royalty paid. No cost or penalty was demanded from the petitioner for which goods petitioner produced the relevant documents and cost and penalty were demanded for the goods for which petitioner could not produce challans. The petitioner, in pursuance of the order dated 8th August, 2000, paid Rs.50,000/- as per the assessment made by the Officer concerned. The petitioner, therefore, has filed this writ petition for seeking a declaration that the petitioner is not liable to pay royalty or any amount and the amount of Rs.50,000/- recovered may be ordered to be refunded to the petitioner.

Ranchi Bench of the Patna High Court in the case of **M/s. Madhusudan Choudhary V. State of Bihar & Ors. (1996(1) PLJR 723)** held that sub-rule 10 of Rule 40 of the Bihar Minor Mineral Concession Rules, 1972 is intra-vires. Further, Single Bench of this Court in the case of **M/s. Awash v. State of Bihar & Ors. (2002 (1) JCR 217)** held that Mining Officer cannot demand royalty in respect of minor minerals used by contractors doing construction work of persons other than Central or State Governments or Corporation. Learned counsel for petitioner contended that the Division Bench in paragraph 7 of the above judgment held that Rule 40(10) of Rules 1972 applies to the works contractors and not to "other than the works contractors".

Learned counsel for the petitioner further contended that it is clear from Rule 40 that the person, who is guilty of illegal mining or illegal removal of minor mineral, alone can be proceeded for levy of penalty or sentence and the person, who has used the minor mineral, cannot be subjected to proceeding under Rule 40(1) of the Rules of 1972.

The High Court has pointed out that sub-rule 10 of Rule 40 applies to the works contractors, who are given contracts of the Departments of Central or State Government including company, corporation, undertakings, autonomous body of the Government, who engages works contractors for any kind of construction on their behalf. The petitioner admittedly is not the "works contractor" and is not doing the "works of the Department" as explained in Explanation (i) and (ii) of sub-rule 10 of Rule 40. The petitioner is, therefore, not liable to be proceeded under sub-rule 10 of Rule 40.

The High Court further pointed out that the petitioner, who consumed the minor minerals, was asked to show relevant material documents to find out whether the minor minerals used by the petitioner was already subjected to payment of royalty, etc. under the Rules of 1972. The petitioner appeared before the same authority and submitted his documents and after considering all documents, the authority, in the order dated 8th August, 2000, found that challans for 3,86,500 bricks were not produced by the petitioner. In view of the above finding of fact, a penalty of Rs.50,000/-, which includes the royalty, was imposed on the petitioner. Therefore, in the facts of this case, Rule 40(1) was complied with before imposing the levy of penalty.

Accordingly, the High Court held that the petitioner as a private developer and builder was not covered under sub-rule 10 of Rule 40 but the Revenue Authorities had jurisdiction to proceed against the petitioner to enquire whether the minor minerals consumed by the writ petitioner was royalty paid minor minerals or not. The Revenue Authorities, after giving full opportunity to the writ petitioner under Rule 40(1), recovered the cost of minor minerals and penalty thereon. Thus, there is no illegality in the order impugned. Accordingly, the High Court has dismissed the writ petitions.

Petition dismissed.

2. State of Rajasthan & Ors. Appellants v. Hindustan Zinc Ltd & Anr. Respondents, AIR 2013, the Supreme Court 1492, Vol. 100, Part 1193, May 2013.

Subject: Challenging the recovery of difference of royalty.

Facts:

Being aggrieved by the judgment dated 6th July, 2007 delivered by the High Court of Rajasthan in D.B. Civil Special Appeal No.43 of 2006, the afore-stated two appeals have been filed. One appeal has been filed by the State of Rajasthan whereas the other appeal has been filed by Hindustan Zinc Limited, who had been leased land situated in districts Bhilwara, Rajsamand and Udaipur by the State of Rajasthan for extraction of lead and zinc therefrom. As both the appeals arise from a common judgment, at the request of the learned counsel, both the appeals were heard together. So far, as the appeal filed by the State of Rajasthan, viz., Civil Appeal No. 1494 of 2008 is concerned, it mainly challenges the impugned judgment on the ground that by virtue of methodology directed to be employed in the said judgment, the State would suffer substantial loss as the lessee company, viz,. Hindustan Zinc Limited would be paying much less royalty than what it is supposed to pay. On the other hand, an appeal has also been filed by Hindustan Zinc Limited as it has been aggrieved by the direction issued by the High Court, whereby the amount of royalty has been directed to be re-calculated.

Civil Appeal No. 1494 of 2008

The Respondent-company had been leased land in the areas of District Bhilwara, Rajsamand and Udaipur for the purpose of extracting lead and zinc therefrom under the provisions of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act'). Section 9 of the Act is the charging section, which enables the State to recover royalty in respect of the minerals extracted by the holder of a mining lease. The Mineral Concession Rules, 1960 (hereinafter referred to as 'the Rules') have been framed in exercise of the powers conferred under Section 13 of the Act Rules 64A, 64B, 64C & 64D of the MCR 1960. Rules are relevant Rules, which pertain to calculation of the amount of royalty payable by the holder of the lease in respect of the minerals extracted from the land leased to the holder of the mining lease.

The Government had issued Notifications determining the rate at which royalty was to be paid by the holder of the lease in respect of the minerals extracted. Two Notifications are relevant for the purpose of determining the issue involved in these appeals. Under Notification dated 11th April, 1997, by virtue of item nos. 22 and 41 incorporated in the said Notification, royalty in respect of the afore- stated two minerals was to be paid.

By virtue of the Notification dated 12th September, 2000, the manner in which the royalty was to be calculated had been changed. Formerly, the royalty was to be charged on the basis of mineral concentrate produced but by virtue of the Notification dated 12th September, 2000, royalty is now to be charged on ad valorem basis on the contents of metal found in the ore produced.

According to the appellant-State, the Respondent-lease holder was supposed to pay the royalty on the entire mineral extracted from the earth and accordingly the impugned notices were issued to the Respondent for recovery of difference of royalty. On the other hand, the case of the Respondent-company was that the royalty was chargeable only on the contents of lead and zinc metal in the ore produced because, by virtue of the Notification issued in 2000, the Respondent-company was supposed to pay royalty only on the contents of lead or zinc, as the case may be, contained in the ore produced.

The demand made by the appellant-State under the impugned notices had been upheld by the revisional authority but the same had been quashed by the High Court when the order of the revisional authority was challenged before the learned Single Judge of the High Court and the view of the learned Single Judge had been upheld by virtue of the impugned order passed by the Division Bench. The learned counsel appearing for the appellant-State submitted that the High Court committed an error in interpreting provisions of the Rule 64A, 64B and 64C of the Rules read with the Notification dated 12th September, 2000 issued by

the Central Government. Learned senior counsel appearing for the appellant contended that the royalty ought to have been charged on the basis of the metal contained in the ore produced so as to give effect to the provisions of Section 9 and the Second Schedule to the Act read with Rules 64B, 64C and 64D of the Rules. Learned counsel for the Respondent contended that unless the ores are taken out of the leased premises, the royalty would not be leviable, is not correct because processing the ore would also amount to consumption of the ores and, therefore, even if the said ores are not physically taken out of the leased area, the royalty will have to be paid on the contents of lead and zinc contained in the ore. It is further contended that the amount of royalty demanded by the appellant-State from the Respondent-company was just and proper and therefore, the order passed by the High Court be quashed and set aside. It is relied upon the judgment delivered by this Court in State of Orissa & Ors. v. M/s. Steel Authority of India Ltd. [(1998) 6 SCC 476].

The learned senior counsel appearing for the Respondent-company submitted that the negligible contents of lead and zinc contained in tailings, which is not taken out of the leased area and which is dumped within the leased area, can never be taken into account for the purpose of calculating royalty for the reason that according to the Notification dated 12th September, 2000, royalty is to be paid in respect of the metal contained in the ore produced and the metal which has been left out by way of tailings within the leased area would never be treated as metal in the ore produced. It is further contended that the negligible metal contained in the tailings, slimes or the rejects can never be the subject matter of calculation of royalty as that portion of metal was returned to the mother earth by dumping the same in the leased area without being taken out of the leased area and that cannot be included in the contents of the metal produced.

Decision:

The Supreme Court has stated that prior to issuance of Notification dated 12th September, 2000, by virtue of Notification dated 11th April, 1997, royalty was to be calculated on the basis of metal concentrate produced by the lease holder whereas in pursuance of Notification dated 12th September, 2000, the method of calculating the royalty has been substantially changed and in pursuance of the said Notification, royalty is to be calculated on the contents of lead and zinc metal in the ore produced. The Supreme Court has referred to the Rule 64B and 64C of MCR 1960 and the judgment delivered in the case National Mineral Development Corporation Ltd v. State of Madhya Pradesh & Anr.(AIR 2004 SC2456: AIR 2004 SCW 29369) and the judgment delivered by the learned single Judge of the High Court and held that the courts below did not commit any mistake in arriving at the conclusion that the holder of the lease was not liable to pay the amount demanded under the impugned notices because, by virtue of Notification dated 12th September, 2000 read with the relevant Rules, the lease holder is supposed to pay royalty only on the contents of metal in ore produced and not on the metal contained in the tailings, rejects or slimes which had not been taken out of the leased area and which had been dumped into dumping ground of the leased area.

Accordingly, for want of any substance in the appeal, the Supreme Court has dismissed the appeal No. 1494 of 2008 without any order as to costs.

The Supreme Court was further stated that the metal concentrate which had been taken out from the leased area is known to the parties and therefore, it is not necessary to have any further details regarding the ore produced by the appellant- company.

Accordingly, the Supreme Court has allowed the appeal No. 1526 of 2008 filed by the appellant company without any order as to costs.

Order accordingly

3. AIR 2013, Madhya Pradesh 72, Vol.100, Part 1193, May 2013 Aparn Gramin Vikas Sanstha Samiti, Petitioner Society v. State of M.P., Respondent.

Subject: The writ petition under filled against order dated 1.6.2010 and order dated 24.7.2010 whereby the flag stone quarry lease of the writ petitioner has been cancelled by the Collector (Mines), District Shivpuri, M.P.

Facts:

An order to grant quarry lease was passed by the Collector (Respondent No.2) on 22.2.2009 for a period of 10 - year in favour of appellant. Vide Order on 20.5.2009 lease-deed was executed and the appellant was allowed to operate the quarry lease. The quarry lease which was granted in favour of petitioner and mining extraction which was being carried out for last one year, it was withdrawn and cancelled by the order of Respondent No.2 on 1.6.2010. On 10.6.2010 learned Single Bench of this Court in W.P.No.3091/2010 (Aparn Gramin Vikas Sanstha Samiti v.State of M.P. & Anr.) directed Respondent No.2 to decide the matter afresh; and on 24.7.2010 again the same order, was passed by Respondent No.2.

The learned counsel for the appellant contended that the consent of the owner of the private land was not at all required to be obtained before the grant of mining lease. In this context, learned counsel has invited the attention of Section 57 of the M.P.Land Revenue Code (in short "Code") and has submitted that the State Government is the owner of all land including the mines, quarries, minerals, etc. and, therefore, no consent was required from the Government lessee to whom the surface area of the land was earlier allotted. Learned counsel also contended that Section 247 of the Code which speaks about Government's title to minerals, and invited then attention to Section 10 of the Mines and Minerals (Development and Regulation) Act, 1957 (in short 'Act of 1957") and also Rule 9 of the M.P.Minor Mineral Rules, 1996 (in short "Rules of 1996"). It is also stated that the entire order of learned Writ Court is in favour of appellant but in para 9 of the impugned order the writ petition has been dismissed solely on the ground that petitioner did not pay any compensation to trial persons, Patta holder and further that looking to the provisions contained in Clause 17 of Part – 4 of Revenue Book Circular, there is no provision to give consent, therefore, in such circumstances, the Collector has rightly cancelled the quarry lease of the petitioner. Hence, it has been prayed that by allowing this appeal, writ petition of the writ petitioner be allowed.

On the other hand learned Government Advocate has contended that there is absolutely no document on record to show as to whether the tribal persons who were Pattedharis gave any consent to operate the quarry lease to the petitioner and even if there was any consent, the same was withdrawn by them and, therefore, by taking note of all these facts and circumstances and by placing reliance upon Clause 17 Part-4 of the Revenue Book Circular the writ petition has been dismissed and thus the order is not at all erroneous or requires any interference.

Decision:

The High Court has stated that the only ground upon which the quarry lease which was earlier granted to the petitioner has been cancelled is that Government lessee/Pattedars have withdrawn their consent, but, neither there is any provision in the Act of 1957 nor in the Code and so also in the Rules of 1996 that any prior consent is required to be obtained. Although Rule 9 (k) speaks about filing of an affidavit.

It is further stated that earlier the consent of the owner (Pattedar) was obtained to permit the appellant to enter upon the surface area of the quarry lease. But, because they have withdrawn their consent, therefore, the impugned orders have been issued by the Collector, once permission has been granted by the Pattedar/Government lessee to petitioner to carry out the quarry lease upon the surface area and to enter upon it which they were enjoying there is no provision in the law that subsequently it can be withdrawn. Learned Government has also not pointed-out any such provision either under the Code or under the Act of 1957 or even under the Rules of 1996. There cannot be any such statutory provision for the simple reason that if there would have been any such provision, the quarry lease holder like petitioner would depend and would live upon the mercy of those persons who may at any point of time may change their mind and may withdraw such consent which was earlier given and, therefore, according to us since there is no statutory provision to withdraw the consent to use the surface area, which was earlier given, therefore, the impugned orders of the Collector stand nowhere.

Accordingly, the High Court has allowed the appeal and set aside the order dated 25.11.2010 of learned Writ Court, and the orders of the Collector dated 1.6.2010 an 24.7.2010 are also set aside. However, on being submitted by the Pattedaris of the Government land who are tribal necessary compensation, etc. may be directed to be paid according to the law if already not paid and in this regard the Collector shall be free to initiate proceedings and may decide it in accordance with law after providing opportunity of hearing to the Pattadaris (Government lessee) as well as to writ petitioner. Let this exercise be done within a period of 6 - month from the date of this order. However, it is made clear that assessment of the compensation, etc. will not come in way of operating the quarry lease by the appellant because from the impugned orders of Collector there is no adjudication that compensation, has not been paid to the Pattadaris however it will be obligatory on the part of writ petitioner to pay compensation as fixed by the Collector subject to statutory remedy of appeal, etc. available to both the parties. Lastly, the High Court has allowed the appeal without any costs.

Appeal allowed.

4. Rajesh Pathak Petitioner v. State of Madhya Pradesh and others, Respondents, AIR 2013,Madhya Pradesh 80,Vol.100,Part 1193,May 2013.

Subject: Challenging the order dated 30.06.2011 for cancellation of the petitioner's auction bid and also forfeiture of the security amount on the ground of failure to execute a contract agreement within a period of 30 days.

Facts:

The petitioner is a mining contractor. Respondent no.2 issued a notice for auction of quarry of sand, which is a minor mineral. The area mentioned in the auction notice was 3.037 hectares bearing Khasra no. 232 situated at village Khairi, Tahsil Khairlanji, District Balaghat. The allotment of quarry of sand by auction is made as per the procedure prescribed in Chapter VI of the Madhya Pradesh Minor Mineral Rules, 1996 (in short, "the Rules").

The petitioner has executed an agreement to bid in the prescribed form XVI as provided under Rule 36(3). After the auction, Respondent no.3 declared the petitioner as successful bidder vide memo dated 11.11.2010, The petitioner was, therefore, required, as per Rule 37 and Clause 6 of the agreement to bid, to execute a contract-agreement within a period of 30 days from the date of receipt of approval of the contract failing which the earnest money and the security deposited by him were liable to be forfeited. But the Sarpanch of Gram Panchayat Khairi made a written objection dated 15.12.2010, to Respondent no. 2 to the effect that as the land in question is being used for the purposes of cremation and burial by the members of scheduled tribes residing in villages Khairi, Khairlanji and Navegaon, its auction be cancelled. Gram Sabha of village Khairi also in its meeting held on 29.10.2010 passed a resolution, for the cancellation of auction of quarry which too was made available to Respondent no. 2. Having regard to the objection and resolution, Respondent no. 2 by his letter dated 19.1.2011, directed the Sub-Divisional Officer, Waraseoni, to submit his report whether grant of trade quarry be made. The Sub-Divisional Officer held a spot inspection through the Tahsildar and submitted a report dated 27.1.2011, stating therein that since the area auctioned is being used for funeral and burial purposes, the auction for trade quarry be cancelled. Member of Legislative Assembly, Waraseoni, also made a representation dated 3.1.2011, to Respondent nos. 2 and 3 for the cancellation of auction in the interest of villages because they have been using the land for cremation and burial purposes. Respondent no.2, in turn, sent a memo dated 7.2.2011, to the State Government narrating the details of auction, objections received and the report of revenue officers and sought instructions in the matter. The petitioner, who had earlier sought extension of time on medical grounds for the execution of contract agreement, also made a representation dated 17.2.2011, Respondent No.2 sent a reminder dated 6.6.2011, for instructions. The State Government, in reply vide letter dated 23.6.2011 without addressing the issue regarding the status of land auctioned, instructed Respondent no.2 that the auction can be cancelled on the ground of petitioner's failure to execute the contract-agreement within a period of 30

days. It is to be noted that the State Government did not instruct Respondent no.2 to forfeit the security amount deposited by the petitioner while canceling the auction. Respondent no.2 also unfortunately did not decide the issue whether trade quarry of the land, if being used for cremation and burial purposes by the villagers, can be granted to the petitioner. But he, by the impugned order dated 30.6.2011, not only cancelled the petitioner's auction bid but also directed for forfeiture of the security amount deposited by him simply on the ground that he failed to execute a contract-agreement within a period of 30 days. It is in this background the petitioner has filed the present petition.

Decision:

The High Court has stated that there is a serious dispute regarding the nature of use of land which was auctioned for quarry lease to the petitioner. The Respondent No.2 would not have executed the contract-agreement within 30 days even if the petitioner was willing for the same because Respondent no.2 had himself ordered for an enquiry regarding the status of land auctioned and then referred the matter to the State Government for instructions where it remained pending for more than four months. Also Respondent no.2 should have, in all fairness, first decided the dispute regarding the nature of use of land and whether having regard to the material available on record particularly the report of Sub-Divisional Officer to the effect that the land was being used for cremation and burial purposes by the villagers, it can be granted for trade quarry. We, therefore, find that Respondent no.2, by insisting the petitioner to execute the contract-agreement without first deciding the dispute and passing the order dated 30.6.2011, acted arbitrarily and unreasonably.

Accordingly, the High Court has quashed the order dated 30.6.2011 and directed the Respondent No.2 to immediately refund the security amount and earnest money deposited by the petitioner along with the prevailing rate of interest. Thus, the High Court has allowed the petition without any order as to costs.

Petition allowed.

(5) M/s. K.P. Granite Industries & Another, Petitioner v. State of Orissa & Another Respondents, AIR 2013, Orissa 80, Vol.100, Part 1193, May 2013.

Subject: Challenging the cancellation of grant of lease and the lease deed.

Facts:

Petitioner no.1-firm was mainly engaged in mining of decorative stone and related activities. Petitioner no.2 is the Managing partner of petitioner no.1-firm. On 30.4.2004, petitioner no.1-firm applied for a mining lease of decorative stone over an area of 30.865 hectares in village Andharijholi in the district of Gajapati before opposite Party no.1-Commissioner-cum-Secretary, Department of Steel and Mines, Bhubaneswar under Rule 15 of the Rules, 2004. Opposite Party no.2-Director of Mines, Odisha forwarded the said mining lease application of petitioner no.1-firm to the State Government on 5.7.2004 with the recommendation for grant of mining lease over an area of 26.325 hectares. On 18.10.2004, Government of Odisha-opposite Party no.1 issued terms and conditions for grant of mining lease over an area of 26.325 hectares, which was accepted by the petitioner-firm on 20.10.2004. Upon acceptance of terms and conditions by the petitioner-firm, the Govt. of Orissa-opp. Party no.1 issued the order granting mining lease for decorative stone over 26.325 hectares in village Andharijholi in the District of Gajapati in favour of the petitioner-firm for a period of 10 - year vide proceeding No. 11795 dated 31.12.2004. Pursuant to grant of mining lease by the State Government on 31.12.2004, opp. Party no.2 vide letter dated 19.1.2005 directed opposite Party no.3 to execute the mining lease deed with petitioner-firm. Upon a joint inspection, the mining lease area was demarcated by the officials of the Mining, Revenue and Forest Department on 19.4.2005. On such inspection, it was found that the granted mining lease area contains cashew trees and other unclassified and bushy growth for which recommendation was made by the inspecting team for deletion of the vegetated area and to grant mining lease over an area of 6.972 hectares out of 26.325 hectares.

The joint inspection report dated 19.4.2005 was forwarded by the Director of Mines-opp. Party no.2 on 2.5.2005 to the State Government with the recommendation to consider grant of mining lease over a reduced area of 6.972 hectares. Since no action was taken by the State Government to execute the lease deed with the petitioner-firm, the latter filed writ petition bearing W.P.(c) No. 4331 of 2005 before this Court, which was disposed of on 25.4.2005 with a direction to the petitioner-firm to produce the writ petition with all annexures before opp. Party no.2- Director, Mines which shall be treated as a representation and opp. Party no.2 was directed to consider the said representation for due compliance of order dated 19.1.2005 of opp. Party no.2.

On 22.8.2005, opp. Party no.1 in supersession of its earlier order dated 31.12.2004 has granted mining lease for decorative stone over an area of 6.972 hectares out of the earlier granted area of 26.325 hectares and directed petitioner no.1-firm to submit Mining Plan. The Mining Plan in respect of the mining lease was approved by opp. Party no.2 on 27.1.2006. The mining lease deed was executed on 13.2.2006 in Form-H as provided under Rule 61(1) of the Rules, 2004, which was registered on 14.2.2006. Part-II of the mining lease deed executed on 13.2.2006 contained the conditions as provided under Rule 25 of the Rules, 2004. The petitioner-firm started mining operation of the lease hold area on 2.8.2006 and continued for six months. On 9.2.2007, the petitioner-firm deposited Rs.77, 091/- with opp. Party no.3 towards surface rent, dead rent for the years 2006 and 2007 with opp. Party no.3-Mining Officer, Ganjam towards surface rent and dead rent for the year 2006 and 2007 with interest. In terms of Clause 5 of Part- II of Mining Lease deed dated 13.2.2006, the lessee-petitioner-firm intimated the competent authority under the Rules, 2004 regarding discontinuance of the mining operation over the lease-hold area as there was no market demand of decorative stone in the region from the date of execution of lease deed. It was further intimated that decorative stones are mainly exported from the State of Orissa. The said intimation was received by the competent authority on 8.11.2007. Again vide letter dated 23.2.2008, petitioner-firm intimated opp. Party no.3 regarding discontinuance of the mining operation in the lease hold area due to health problem of petitioner no.2. But no reply either rejecting and/or objecting the letter regarding discontinuance of mining operation was ever communicated to the petitioner-firm.

On 30.6.2008, opp. Party no.3 issued demand notice directing the petitioner-firm to deposit Rs.1, 78,494.00 towards dead rent and surface rent up to 31.12.2008. Pursuant to such demand notice on 14.8.2008, the petitioner-firm deposited Rs.79,910/- with opp. Party no.3 towards surface rent and dead rent up to 31.12.2007 which was duly received and acknowledged by opp. Party no.3. On 12.10.2010, opp. Party no.3 issued demand order directing the petitioner-firm to deposit Rs.4,24,483/- towards dead rent and surface rent for the period 2008-2010 and interest for the year 2007. Pursuant to such demand notice dated 31.12.2010, petitioner firm deposited Rs.4.24,483/- with opp. Party no.3 which was duly received and acknowledged by opp. Party no.3. On 31.12.2010, the petitioner-firm submitted a representation before the competent authority through proper channel to accord permission for opening quarrying operation and lifting of decorative stone from the leasehold area and the said representation was duly forwarded by opp. Party no.2 to opp. Party no.3 vide its letter dated 18.1.2011. On 31.12.2010, the petitioner–firm also requested the opp. Party no.3 to issue permit to lift the existing stock of 70.073 cubic metres of decorative stone as there was market demand. While the petitioner-firm awaiting permission for opening mining operation and lifting of the materials, all of a sudden on 29.7.2011 opp. Party no.1 issued a notice to the petitioner-firm for personal hearing as to why the lease shall not be cancelled under Rule 25(5) of the Rules, 2004. In the said notice it was stated that opp. Party no.2 vide his letter dated 3.2.2011 has submitted a proposal for cancellation of the mining lease on the ground that after execution of lease deed, petitioner-firm has kept the area idle since more than two years deviating Rule 25.(5) of the Rules, 2004. Pursuant to the aforesaid notice, on 16.8.2011, petitioner no.2 appeared before the Additional Secretary to Govt. Department of Steel and Mines for personal hearing and submitted a note stating its case. Petitioner-firm in the personal hearing also stated that it will start a decorative stone processing unit in the lease hold area within a period of one year from the date of issuing the order for reopening the quarry and submitted a letter to that effect. Opp. Party no.1 without considering the matter in its proper perspective, and without supplying the proposal of opp. Party no.2 dated 3.2.2011 to the petitioner-firm, in a most illegal, arbitrary and perfunctory manner vide order dated 22.9.2011 has held that there is violation of Rule 25(5) of the Rules, 2004 and, therefore, the mining lease granted on 22.8.2005 and the lease deed executed on 13.2.2006 were cancelled. Hence, the present writ petition.

Learned counsel for the petitioners submitted that the initiation of proceeding by the Opp. Party for cancellation of the mining lease dated 13.2.2006 suffers from gross violation of principles of natural justice as the Opp. Party has not supplied the proposal dated 3.2.2011 of Opp. Party no.2 to the petitioner-firm which was reflected in the notice dated 29.7.2011 as well as in the impugned order dated 22.9.2011. Hence the impugned order dated 22.9.2011 was passed relying upon various documents such as show cause notice dated 18.12.2007 and 28.1.2009 of Opp. Party no.3 as well as the letter dated 28.10.2010 by opp. Party no.3, but the same were not supplied to the petitioner-firm. Hence, the said order suffers from gross violation of principles of natural justice.

No notice has ever been issued by the competent authority to the petitioner-firm to rectify the breach as contemplated under sub-rule (7) of Rule 68 of the Rules, 2004. The two show cause notices dated 18.12.2007 and 28.1.2009 as well as the letter dated 28.10.2010 of opp. Party no.3 which were referred to the impugned order dated 29.9.2011 were not reflected in the notice dated 29.7.2011.

It is further stated that since petitioner no.1 deposited the surface rent and dead rent for the period from 13.2.2006 to 31.12.2010 with interest which was duly received and acknowledged by the appropriate authority, there is no loss to State Exchequer. For unavoidable circumstances, the petitioner-firm could not continue its mining operation after six months of the commencement of the mining operation, which fact was communicated to the competent authority. Because of discontinuance of mining operation of the lease-hold area by petitioner – firm, there is no loss to the State exchequer as royalty of decorative stones at the present time is higher than the rate of royalty prevalent during the period 2007-2010. In the meantime, the petitioner-firm has entered into sale/purchase contract with various buyers for supply of decorative stones from his lease hold area and the petitioner has employed 45 number of person for working in the lease-hold area of the petitioner firm and 80 number of person are also indirectly dependants on the said mines. If the mining lease is not restored, livelihood of more than 125 person engaged directly and indirectly for working in the mines will be put to jeopardy. The petitioner-firm has set up a decorative stone processing unit which is a value addition of lease hold area of the petitioners. The petitioners have already purchased land from private person which are adjacent to lease hold area for setting up of a decorative processing unit for value addition.

Learned Additional Government Advocate submitted that since the petitioner did not work upon the lease for a continuous period of two years the lease is liable to be cancelled and in the present case in view of the undisputed fact that the petitioner has not worked upon the lease for a continuous period of two years, opposite Party No.1 is justified in passing the order dated 22.09.2011 under Annexure-11. It is further submitted that reasonable opportunity of hearing was afforded to the petitioner before cancelling the lease. In support of his contention, learned Additional Government Advocate relied on petitioner's own letter dated 31.12.2010.

Point of issues:

(i) Whether any reasonable opportunity of hearing was afforded to the petitioner before passing the impugned order dated 22.09.2011 under Annexure- 11 cancelling petitioner's mining lease granted vide proceeding No.8418/SM dated 22.08.2005 and 10 cancelling the mining lease-deed executed on 14.02.2006?

(ii) Whether an opportunity should be given to the petitioner as provided in sub-rule (7) of Rule 68 by the authority before passing the Order?
(iii) Whether in view of the mandatory provision of subrule(5) of Rule 25 of Rules, 2004, the order of cancellation of lease and the lease agreement is valid and the petitioner is not entitled to the relief claimed in the writ petition?

On the point (i) the High Court has stated that the letter dated 29.07.2011 issued by the Under Secretary to Government of Odisha, Department of Steel and Mines to the petitioner intimating him that the Directorate of Mines, vide, its letter No.1270/DM, dated 03.02.2011 has submitted a proposal for cancellation of the mining lease for decorative stone held by the petitioner over 6.972 hectares in village-Andharajholi under Parlakhemundi Tahasil of Gajapati district on the ground that after execution of the lease deed, the petitioner has kept the area idle since more than two years which deviate the rule 25(5) of OMMC Rules, 2004. It was further

stated that the Additional Secretary to Government, Department of Steel and Mines has fixed the date of personal hearing on 16.08.2011 at 1.00 p.m. to hear the case, as to why the aforesaid lease shall not be cancelled under rule 25(5) of OMMC Rules, 2004 and accordingly, petitioner was noticed to appear before the Additional Secretary for personal hearing on the scheduled date and time. It is further stated that although it is delayed more than two years to run the quarry and it attracts provisions of Mining Act for cancelling M.L., till then the said provision may be relaxed and liberally considered to ensure providing opportunity to the petitioner to open and run the quarry. From the above two letters of the petitioner, it is amply clear that the petitioner has not worked upon the lease for a continuous period of two years and before cancellation of grant of lease agreement under Annexure-11 opportunity of hearing has been provided to the petitioner.

On the point (ii) the High Court has stated that the entire Rule 68 deals with levy of penalty. Rule 68 comes to operation when any person is found extracting or transporting any mineral in violation of the statutory provision. The present case is not a case of extracting or transporting any materials in contravention of the Rules for which penalty is to be imposed under Rule 68. Therefore, the provision of sub-rule (7) of Rule 68 has no application to the present case.

On the point (iii) the High Court has stated that as per Rule 25 (5) of the Rules, no prior permission has been granted to the petitioner for stoppage of quarry operation by the Competent Authority much less on any reasonable ground. In view of the clear statutory provision contained in sub-rule (5) of Rule 25 of OMMC Rules, we do not find that any illegality has been committed by opposite Party No.1 for canceling the grant of lease and the lease-deed under Annexure-11 in view of the clear cut statutory provision contained in sub-rule (5) of Rule 25 of the OMMC Rules, 2004.

Accordingly, The High Court has held that any direction of the Mining Officer to make payment of dead rent will not override the statutory provisions of the Rules of OMMC Rules of 2004.

No any illegality or infirmity in the order passed warranting interference with the same by this Court in exercise of its power under Article 226 of the Constitution of India.

In the result, the High Court has dismissed the writ permission without any costs.

Petition dismissed.

6. M/s. Vasundhara Steel & Power, Petitioner Ltd. v. State of Chhattisgarh and another, Respondents, AIR 2013, Chhattisgarh 93 Vol.100, Part 1194, June 2013.

Subject: Challenging the validity/legality of the notification dated 23.10.2010 where under the State Government has reserve area for itself for prospecting.

Facts:

The Petitioner applied for prospecting license over 315.2 hectares of land in compartments-320, 322, 323, 333, 335 and 337 in village Tumapal and Toroki area, district Kanker, whereas, in the second case, the petitioner applied for prospecting license for 345 hectares of land in compartments-689, 690, 691, 692 and 704 in village Padbera, district Kanker. The State Government gave them show-cause notice dated 6.1.2011 informing them that they have already reserved the area for survey/prospecting iron ore and other mining by the Directorate of Geology of Mining, Raipur, Chhattisgarh and if they wish to say anything in this regard, they could file their objections. The petitioners filed their objections. However, when no orders were passed on the same, they filed revisions before the Central Government under Section 30 of *MMDR* the Act, *1957*. The revisions filed

by the petitioners were dismissed on 30.12.2011 on the ground that the land was already reserved by the State Government for prospecting the same for itself and no opportunity was required to be given to any other person.

The learned counsel for the petitioners submits that under Section 17A of the Act, the State Government could not reserve the area without approval of the Central Government, hence, the Notification dated 30.11.2011 is illegal.

Decision:

The High Court has referred the Section 17A of the MMDR Act,1957 and stated that the sub-section(2) of Section 17A (17A(2)) of the Act provides that the State Government may reserve any area for undertaking prospecting or mining operation by the Government Company or the Corporation owned by the State Government. The High Court has further stated that in this case, the area has been reserved for prospecting or mining by the Directorate of Geology & Mining, Raipur, Chhattisgarh and as such no prior approval of the Central Government was necessary. Even, if it is held that Section 17A (2) of the above said Act applies to the present situation, no benefit can be derived by the Petitioners. Section 17A (2) of the Act is for the benefit of the Central Government. In the present case, the Central Government has no objection. It was for this reason that the revisions of the petitioners were dismissed.

Accordingly, the High Court has held that Section 17A(2) of the Act does not apply when area is reserved by the State Government for prospecting by its Directorate of Geology & Mining, and the notification dated 23.10.2010 is valid. Thus, for want of merit, the High Court has dismissed the writ petitions.

Petitions dismissed.

7. State of Rajasthan & Ors., Petitioners v. Union of India & Anr., Respondents, AIR 2013, Rajasthan 109, Vol.100, Part 1194, June 2013.

Subject: Challenging the revision order dt. 21.7.1998 passed by the Central Government.

Facts:

Respondent No.2-Hindustan Zinc Ltd. filed the revision petition against the order dated 2/9/1998 passed by the petitioner-Mining Engineer by which, an amount of Rs.36,85,58,744/- was ordered to be recovered from them for sale of 18762 tonnes of rock phosphate to private parties for the period from 1975-76 to 1986-87.

Learned Counsel for the petitioner contended that mining lease was allotted to Hindustan Zinc Ltd. - Respondent No.2 vide order dated 3/11/1969 (Ann.1) under Rule 22(i) of the Mineral Concession Rules, 1960 (for short, the "Rules of 1960"). Allotment was made on the condition that lessee shall not dispose of any quantity of rock phosphate surplus to lessee's requirement but shall hand over such surplus quantity to the Director of Mines and Geology, Government of Rajasthan or other officer authorised by him in this regard. The surplus quantity shall be so handed over at a price, which will include a reasonable return on capital employed. Learned counsel further contended that Hindustan Zinc Ltd sold the surplus rock phosphate to private parties for a long period from 1975 to 1988 in open market, which was contrary to the aforesaid condition for grant of mining lease. Petitioner wrote letter to Hindustan Zinc Ltd on 10/6/1988 followed by reminders dated 6/7/1988, 30/7/1988 and 1/8/1988 calling upon them to give details/statement of the quantity of rock phosphate sold to private parties during the aforesaid period but Hindustan Zinc Ltd failed to furnish any detail. It was thereafter that vide order dated 2/9/1988, the Mining Engineer in context of the letter of the State Government dated 23/2/1988 computed the quantity of rock phosphate sold by Hindustan Zinc Ltd to private parties weighing 18762 tonnes and raised demand for a sum of Rs.36,85,58,744/- from Hindustan Zinc Ltd Aggrieved thereby,

Hindustan Zinc Ltd filed revision petition, which was allowed by the Central Government vide order dated 13/9/1977.

Learned Additional Government Counsel contended that the State Government though pursuant to the aforesaid revisional order withdrew its earlier order dated 27/1/1976 whereby, Hindustan Zinc Ltd was prohibited from selling rock phosphate to any private Party but that did not amount to waiver of Condition No.11(2) of the order dated 3/11/1969. The aforesaid condition clearly put a bar on the entitlement of Hindustan Zinc Ltd to sell or otherwise dispose of any quantity of surplus rock phosphate to a private Party. Hindustan Zinc Ltd was under an obligation to sell this surplus rock phosphate to the State Government alone and none-else. Central Government was wholly unjustified in setting aside the demand notice dated 2/9/1988 and the order passed by the Central Government dated 21/7/1998. It was further contended that even if right of Hindustan Zinc Ltd to sell rock phosphate to private Party is accepted for the sake of argument, though not admitted, it would have no right to retain the excess amount of reasonable investment as mine was captive and Hindustan Zinc Ltd was bound to comply with the specific condition of the mining lease.

Learned counsel for the Respondents opposed the writ petition and contended that a request was made by the Hindustan Zinc Ltd to the State Government to purchase rock phosphate but the government disowned the request on the ground that its quality was sub-standard. It was thereafter that Hindustan Zinc Ltd requested for permission to sell surplus rock phosphate to private parties. Government vide order dated 27/1/1976 refused this permission. Hindustan Zinc Ltd thereafter filed revision petition under Section 30 of the Mines and Minerals (Regulation & Development) Act, 1957 read with Rule 55 of the Mineral Concession Rules, 1960 before the Central Government against such refusal. Central Government vide its order dated 13/9/1977, allowed the revision and set-aside the order dated 27/1/1976. It was thereafter that the State Government itself, vide, its order dated 21/7/1998 withdrew its earlier order dated 27/1/1976 prohibiting Hindustan Zinc Ltd to sell rock phosphate to any private Party. That meant that the State Government itself then permitted Hindustan Zinc Ltd to sell rock phosphate to private parties in open market. State Government did not raise any objection till 1988 when for the first time it issued letter dated 10/6/1988 followed by three reminders dated 6/7/1988, 30/7/1988 and 1/8/1988. It is contended the earlier order passed by the Central Government dated 13/9/1977 accepting revision was not challenged by the State Government by filing writ petition or otherwise. The said order dated 13/9/1977 allowing the revision petition filed by Hindustan Zinc Ltd, thus attained finality.

Decision:

The High Court has observed that State Government agreed that any surplus production would be taken over by it at the suitable price but the State Government refused to take over the mineral and denied permission sought for selling the rock phosphate in the open market, which was not justified. It was not in the interest of mineral development to insist the mineral being kept idle and not sold whether in private or in public sector. The RSMML in 1984-85 and 1985-86 did not purchase the rock phosphate on the plea of its being low grade and not suitable for their use because of low P_2O_5 and prohibitively having high silica. It is further observed that there is no regular market for this poor grade of ore. Central Government noted that Hindustan Zinc Ltd every time offered the rock phosphate and only after sale was declined, that the same was sold to private Party.

The High Court has stated that in view of above factual scenario when the State Government had lost the earlier revision petition against its order dated 27/1/1976 whereby, permission to sell rock phosphate to private Party was declined and subsequently when the State Government withdrew its earlier order dated 27/1/1976 vide order dated 22/2/1976, it would be now stopped from questioning the sale of rock phosphate to private parties in open market by the Respondent-Hindustan Zinc Ltd, which in any case is a public sector undertaking. Alternate submission that Respondent-Hindustan Zinc Ltd may be required to refund the amount in excess of reasonable return on the capital employed because Hindustan Zinc Ltd had no right to sell the balance excess ore in the market in view of specific Condition No.11(2) of the order dated 3/11/1969, also cannot be accepted because when the Respondent-Hindustan Zinc Ltd offered to sell surplus rock phosphate to RSMML, State Undertaking, at that time declined to purchase the same on the ground of its being sub-standard and of

lower grade and not suitable for their use because of low P_2O_5 and prohibitively having high silica. The Central Government in earlier dated 13/9/1977 while allowing the revision petition of Respondent-Hindustan Zinc Ltd. observed that surplus rock phosphate was offered @Rs.360/- per tonne to the State Government/RSMML, which was quite a favourable rate considering price of Rs.525/- per tonne for Jhamarkotra rock phosphate prevailing at that time. Mineral was sought to be offered by the Respondent-Hindustan Zinc Ltd even to the State Government in terms of Condition No.11(2) of the order dated 3/11/1969 at the above price indicating reasonable return of capital employed. Lastly, the High Court held that there is no material on record indicating that Hindustan Zinc Ltd made any undue or sizable benefit by selling the rock phosphate to private parties in open market. There is, therefore, no reason for this Court to direct payment of any such assumed amount received by way of sale proceeds from the private parties.

Accordingly, the High Court has dismissed the petition for want of merit.

Petition dismissed

8. Sarvshri Satysheel and company & Ors. Petitioners v. State of UP & Ors. Respondents, AIR 2013, Uttarakhand 59, Vol.100, Part 1195, July 2013.

Subject: Appeal against the revocation of mining leases.

Facts:

Appellant No. 1 was granted a mining lease on 2nd June, 1994, appellant No. 2 was granted a mining lease on 27th June, 1994, and appellant No. 3 was granted a mining lease on 29th June, 1994 by the District Officer, Tehri Garhwal, then an employee of the State of Uttar Pradesh. On 16th December, 1996, Government of Uttar Pradesh revoked the said mining leases. That action resulted in filing of the writ petition before the Hon'ble Allahabad High Court. On the writ petition, an interim order was passed by the Hon'ble Allahabad High Court on 5th February, 1997 to the effect that, if the mining leases are in non-reserved forest area, the operation of the order dated 16th December, 1996 shall remain stayed. According to the appellants, no advantage of the said interim order could be taken and, accordingly, mining activities had to be stopped since 16th December, 1996.

It was contended that Rule 78, granting revisional power to the State Government, was inserted in The Uttar Pradesh Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as the "said Rules") on 27th August, 1994.

It was further contended that by Rule 78, power of revision has been vested in relation to orders passed by District Officer Committee, Director or the Divisional Commissioner and not in relation to orders passed by District Officer. It was submitted that, in terms of Rule 8 of the said Rules, the State Government or authority authorised by it was entitled to dispose of the applications. In 1990, by a notification, District Officer Committee became the authority authorised by the State Government to dispose of the applications under Rule 8 of the said Rules. In the circumstances, in 1994, when the leases were executed in favour of the appellants, the District Officer had no authority to grant the leases. The grant of leases by the District Officer should, in law, be deemed to be grant of such leases by the District Officer Committee. Therefore, an action on the part of the District Officer in the instant case could also be within the revisional jurisdiction of the State Government.

There is no dispute that mining activity is a non forest activity. Therefore, grant of those leases, being in violation of law, were void *ab initio* from the date of grant thereof. Any superior authority, for the purpose of making the things clear, can, at all time, declare that the action complained of is an illegality. The same was done in the instant case by the State Government by declaring that the grant of the leases in question were void *ab initio* and, while doing so, it not only had the revisional jurisdiction, but had otherwise competence also to do so, in as much as, a delegator retains control over the delegate and all its actions at all point of time, except in the case when the delegation is in the field of legislation.

Decision:

The High Court found out that such steps were taken in view of an order passed by the Hon'ble Supreme Court on 4th March, 1997 in connection with another matter. In that case, a direction was given upon the lessees, where the lessees have not forwarded the particulars for seeking permission under the Forest (Conservation) Act, to forward the same immediately, with a corresponding direction upon the State Government to forward all completed pending applications within a period of two week from the date of the said order of the Hon'ble Supreme Court to the Central Government for requisite decisions. The nature of the said order clearly indicates that the word 'lessees' used therein meant those lessees, who were parties to the proceedings before the Hon'ble Supreme Court and not all and sundry lessees sailing in the same boat. In any event, appellants herein forwarded the particulars to the Government only on 3rd October, 1997 and, by that time, even the time given to the State Government for forwarding completed applications to the Central Government had expired and, as such, no action thereon could be taken.
Accordingly, the High Court has dismissed the appeal.

Appeal dismissed

9. Ajay Tiwari, Petitioner v. State of UP and Ors., Respondents, AIR 2013,Allahabad107,Vol.100,Part 1195,July 2013.

Subject : Petition for quashing the order dated 10.4.2012, issued by the State Government by which the petitioner who has been granted mining lease of 4.168 hectares for mining mineral, namely: diaspore/ pyrophillite, has been directed to obtain environmental clearance from the Ministry of Environment and Forests so that the lease deed can be signed. A mandamus has also been prayed for commanding the State Government to execute the lease deed for excavation of Pyophillite and Diaspore in respect of an area measuring 4.168 hectares situated at Village Puradhankuon, Tehsil Maharauni, district Lalitpur.

Facts:

The petitioner made an application for a prospecting licence of pyrophillite and diaspore over an area measuring 32.67 acres vide application dated 27.8.1994, but the State Government vide order dated 23.9.1997 granted only an area measuring 3.24 hectares for a period of 2 - year. The State Government vide order dated 30.8.2010, modified its earlier order by granting an additional lease of the aforesaid mineral for a period of 20 - year for a total area of 4.168 hectares. The petitioner got prepared a mining plan which was approved and recognized by the Government of India, Ministry of Mines, Indian Bureau of Mines, Nagpur. Petitioner submitted the copy of the lease deed to the State Government. The Apex Court in Deepak Kumar & Ors. v. State of Haryana & Ors. (AIR 2012 SC 1386), issued a direction to all the State Governments that leases of minor minerals including their renewal for an area less than 5 hectares be granted by the State/Union Territories only after getting environmental clearance from the State Government vide Government order dated 22.3.2012, directed all the District Magistrates to comply with the order of the Apex Court passed in Deepak Kumar's case

(supra.). The State Government issued an order dated 10.4.2012, directing the District Magistrates to get the environmental clearance certificate obtained from the Petitioner so that he lease deed could be signed. The petitioner being aggrieved by the order dated 10.4.2012, has come up in this writ petition challenging the aforesaid order.

Learned counsel for the petitioner contended that the petitioner's mining lease being for 4.168 hectares i.e. an area less than five hectares, petitioner is not obliged to obtain environmental clearance as per the notification dated 14.9.2006, issued under the provisions of the Environment (Protection) Act, 1986, "hereinafter called the "Act 1986". It is further contended that the said notification required obtaining of environmental clearance only with referred to leases which are for an area of 5 hectares or above. It is also contended that the Apex Court in Deepak Kumar's case (AIR 2012 SC 1386) (supra) was considering a case of minor mineral only and direction by the Apex Court is applicable with regard to minor minerals and has no application with regard to major minerals.

Learned standing counsel contended that no error has been committed by the State Government for directing the petitioner to obtain environmental clearance. When for minor minerals, it is required to obtain environmental clearance of less than area of 5 hectares, the same requirement has to be complied with regard to major minerals also. He submits that although in Deepak Kumar's case (supra) specific directions were issued for minor minerals only, but such directions are fully applicable with referred to major minerals also.

Point of issue:

Whether the decision of the State Government directing the petitioner to obtain environmental clearance for excavation of mining leases for an area of 4.168 hectares with referred to a major minerals is justified or deserves to be set aside.

Decision:

The High Court has referred to Section 2,3(e) of the MMDR Act,1957,Article 51 A(g) of the Constitution, decision given by the Apex in the cases State of Tamil Nadu. v. M/s Hind Stone & ors.(1981)2SCC 205,Deepak Kumar's case (AIR 2012 SC 1386),Rule 31 of MCDR,1988 and stated that regard to minor minerals, but looking to the spirit of the orders and the concern which has been expressed in the said judgment of the Apex Court, excluding major minerals from the requirement of environmental clearance shall be against the spirit of the judgment and object which is sought to be achieved. It is to be noticed that separate rules have been framed namely: The Mineral Conservation and Development Rules, 1988. Rule 31 of the aforesaid Rules provides for protection of environment.

The High Court has further stated that the State Government having taken a decision to require environmental clearance for lease measuring 4.168 hectares can neither be said to be arbitrary nor against the law. The step taken by the State Government towards getting the environmental impact assessment made before the lease is granted is a step taken towards a right direction which needs no interference by this Court in exercise of writ jurisdiction. Thus, the High Court has referred to quash the order of the State Government dated 10.4.2012.

The High Court has directed that in the event of petitioner makes an appropriate application for environmental clearance in accordance with the notification dated 14.9.2006, the same shall be considered by

the competent authority expeditiously and an endeavour be made to dispose of the said application within the statutory period as prescribed under the notification dated 14.9.2006.Accordingly, the High Court has dismissed the writ petition.

Petition dismissed.

10. Smt. Nirmal Malik Petitioner v. State of Rajasthan and Others, Respondents AIR 2013, Rajasthan 132, Vol.100, Part 1196, August 2013.

Subject: Writ petition filed against the order dt. 17.8.1998 passed by the Collector, for recovery of amount on certain fee/duty.

Facts:

Mining lease for minerals i.e. mica, feldspar and quartz near village Nareli, Tehsil and District Ajmer for an area of 45.58 hectares was granted by mining department of the Government of Rajasthan in favour of one Arvind Kumar Garg, proprietor of Arvind Minerals, Ajmer, for a period of 20 - year commencing from registration of lease-deed. A lease-deed dated 04.08.1983 also came to be executed between the Government of Rajasthan and said Shri Arvind Kumar Garg. On payment of stamp duty of Rs.293/-, the mining lease was registered in the model form prescribed under the Mineral Concession Rules, 1960, before the Sub Registrar, Ajmer. Said Shri Arvind Kumar Garg, on account of his illness and inability to supervise the mining operations, submitted an application as per provisions of the Rules of 1960 for transfer of aforesaid mining lease in favour of petitioner for remaining term of lease. Thereafter, petitioner was called upon by the Mining Engineer, Ajmer to submit stamps of Rs.3350/- for the purpose of registration of aforesaid deed. Stamps were duly submitted by petitioner to Mining Engineer, Ajmer, who, vide letter dated 02.03.1998, forwarded the transfer deed dated 27.01.1998 alongwith stamps of Rs.3350/- and called upon the petitioner to submit supplementary agreement for registration. According to petitioner, yearly dead rent of mining lease granted in favour of original lessee was Rs.8740.80 and lease was granted/transferred in favour of petitioner on payment of same yearly dead rent along-with security amount of Rs.2000/- for remaining term of lease of twenty years commencing with effect from 01.10.1983. According to petitioner, the stamp duty payable on the aforesaid document was required to be calculated on yearly dead rent of two years and security amount paid by petitioner coupled with any amount paid by him to transferor Arvind Kumar Garg towards preliminary expenses/improvements. A sum of Rs.13000/- was said to have been paid by petitioner to Arvind Kumar Garg towards expenditure incurred by him on development of the area and the Mining Engineer had calculated the stamp duty payable by petitioner with reference to yearly dead rent, security amount and expenditure of Rs.13,000/-. Thus, the transfer deed was to be registered on valuation of Rs.32,481/- and payable stamp duty at the rate of 10% was Rs.3,248/-, as against which the stamp duty of Rs.3350/- was actually paid by the petitioner. The transfer deed was earlier registered with the Sub Registrar. The Collector (Stamps), Ajmer City, however, valuing the mining lease at Rs.1,20,31,125/-, called upon petitioner to pay stamp duty of Rs.12,03,125/-. Aggrieved thereby, petitioner submitted a detailed representation to Inspector General, Registration & Stamps Department, Ajmer, on whose behalf the Collector (Stamps), Ajmer, was acting and a request was made to Collector (Stamps) Ajmer to treat said representation as reply to notice given in present case. The Collector (Stamps) Ajmer, vide order dated 17.08.1998, accepted reference made by Sub Registrar, Ajmer, and held that document of transfer deed in favour of petitioner involved transfer of physical possession and exchange of rights and such transaction came within the definition of conveyance. It further held that value of lease is Rs.2,25,01,500/- and found stamp duty of Rs.2,25,050/-, registration fee Rs.25,000/- and penalty Rs.1,00,000/- payable, and after deducting already paid amount of stamp duty and registration fee, a sum of Rs.22,46,800/- towards stamp duty, Rs.24,665/- towards registration fee and Rs.1,00,000/- towards penalty, total amounting to Rs.23,71,465/- was found recoverable from petitioner. Aggrieved thereby, petitioner has preferred this writ petition.

Learned senior counsel for petitioner contended that the government has now itself realized that charging of stamp duty on the value of entire mining lease and for that matter, land covered by entire mining lease, would not be just and proper.

On the other hand, learned Additional Government Counsel on behalf of the Respondents contended that the stamp duty payable on the document dated 27.01.1998 was required to be calculated on yearly dead rent for two years. Second Schedule attached to the Act clearly prescribes the rate of stamp duty to be paid on different kinds of instruments. The instrument submitted by the petitioner for registration is squarely covered by Article 63 of Second Schedule and according to Article 63 the Collector (Stamps) was justified in treating the instrument to be one for conveyancing for an immovable property and the Respondent was justified in demanding 10% of the market value of the immovable property in accordance with Article 23 of the Second Schedule. Any reference to the Mines and Minerals Act and Minor Minerals Concession Rules is absolutely irrelevant for the purpose of charging of stamp duty. It is, therefore, prayed that the writ petition be dismissed.

Decision:

The High Court has stated that in the present case the original lease itself was granted in favour of Arvind Kumar Garg, proprietor of Arvind Minerals, Ajmer, for a period of 20 - year and lease was executed on 04.08.1983. Subsequently, however, sanction for transfer of lease in favour of petitioner was issued by the Director, Mines & Geology Department, Udaipur, vide order dated 22.09.1997 and deed for transfer of mining lease in the form prescribed under Rule 37 of the Rules of 1960 came to be executed amongst the transferor Arvind Kumar Garg and the transferee-petitioner and the Governor of the State of Rajasthan vide agreement of transfer dated 27.01.1998. By that time, fifteen years had already gone by, thus the remaining lease period was only five years or thereabout. Thus, the stamp duty, that was payable, was to be counted on the basis of yearly dead rent for two years and the security amount paid by the petitioner coupled with any amount paid by petitioner to transferor towards preliminary expenses/improvements, if any. Such amount was disclosed before the Mining Department to be Rs.13000/-. Learned senior counsel for petitioner is, therefore, justified in contending that yearly dead rent for two years would be Rs.17,481.60 (8740x2), the amount of security would be Rs.2,000/-, the amount of expenditure on improvements agreed to be paid by petitioner to transferor would be Rs.13,000/-; thus, a total amount of Rs.32,481.60 would form the basis for calculation of stamp duty at the rate of 10% which would come to Rs.3,248/- and the stamp duty actually paid by the petitioner is Rs.3,350/-. Even the Rajasthan Stamp Law (Adaptation) Act, 1952, in its Entry No.35, makes it clear that the proper stamp duty where the lease purports to be for a term of not less than twenty years, is the same duty as on a conveyance for a consideration equal to the amount or value of the average rent of two years.

The Government itself has now seen the reason of the argument of the petitioner by issuing Notification dated 29.03.2001 whereby, the stamp duty has been ordered to be charged at the rate of 11% with reference to the amount of dead rent, security amount, transfer fee and miscellaneous expenses in both the cases i.e. in the case of grant/renewal of mining lease and transfer of mining lease.

Consequently, the High Court has allowed the writ petition with the terms is allowed in the terms indicated above and order dated 17.08.1998 passed by the Collector (Stamps) Ajmer in Case No.564/1998, is set aside. This also disposes of stay application.

Indicated above and set aside the order dated 17.8.1998 passed by Collector (Stamps),Ajmer and also disposes of stay application.

Petition allowed

11. Indian Hume Pipe Co. Ltd. Petitioner v. State of Andhra Pradesh & Others, Respondents, AIR 2013, Andhra Pradesh 120, Vol.100, Part 1196, August 2013.

Subject: Issue involved in this batch of writ petitions is that whether the seigniorage fee or dead rent is payable on the gravel or soil that emanates in the course of digging of foundations for civil works of different categories.

Facts:

The petitioners are contractors or agencies, undertaking civil works of different types, mostly entrusted by the Government. In the course of execution of works, be it, for construction of buildings or laying pipelines, the digging or excavation takes place. After the foundations are constructed, or pipelines are laid, as the case may be, part of the earth that is dug from the trenches is used in filling them. The remaining part, which represents the volume of the foundation, or pipe, laid in the trench, would remain. Most of the time, it is spread by the side of the works. In exceptional cases, it is transported to a place, outside the site of construction. In case of construction of buildings, it may be used at other places in the same site.

The petitioners have been carrying out works under different contracts. The relevant agreements did not provide for any payment or deduction of seigniorage fee or dead rent on the earth that comes out of the foundations of trenches. The Vigilance Wing of the Mines and Geology Department appears to have taken the view that seigniorage fee or dead rent are payable on such quantities also. Acting on the same, the respective Assistant Directors of Mines and Geology issued demand notices, requiring the petitioners to pay the seigniorage fee on the quantities indicated therein. In certain cases, penalties are also levied.

It was contended that the occasion to levy seigniorage free or dead rent would arise, if only a lease, to quarry minor mineral, is granted by the competent authority, and the concerned mineral is quarried and sought to be taken away from the leased area. They submit that none of them are lessees, nor they have made any attempt to quarry the gravel or earth, much less did they make any attempt to transport the mineral to any place, outside.

On behalf of the Respondents, it is contended that the gravel that is excavated in the course of execution of work is a minor mineral and irrespective of the purpose for which it was excavated, seigniorage fee becomes payable as provided for under the A.P. Minor Mineral Concession Rules, 1966 (for short 'the Rules').

Learned Additional Advocate General appeared on behalf of the Respondents contended that the only ground on which the Respondents sought to levy seigniorage fee on the petitioners is that in the course of execution of works, considerable quantity of gravel was excavated and only part of it was used in leveling the trenches. The levy is on the estimated differential quantity.

The activity of mining has its own specific attributes. Its principal objective is to extract mineral and utilize it for commercial purposes. Since the Government holds the sovereign rights over the minerals, that are impregnate in the earth, it is only on being permitted by it, that the activity of mining can take place.

Decision:

The High Court has stated that since the digging of the trench is for the purpose of civil work, it cannot be treated as mining activity at all. Added to that, the digging was not undertaken with an objective of recovering gravel or any other specified material. On the other hand, the gravel or earth came to be removed in the course of digging the trench. Even if stone comes in the trench, that has to be blasted or cut. On that account, the concerned individual or the agency cannot be said to have undertaken mining activity.

The High Court has further stated that mathematical calculation of what would have been the earth executed in the course of digging the trench, what would be the quantity of earth that is needed to level the trench, after the completion of the work, and what would remain thereafter, is done and on the last of the quantities, the seigniorage fee is sought to be levied. The whole approach of the Respondents is untenable.

Lastly, the High Court has allowed the writ petitions without any order as to costs.

Petition allowed

12. Geomin Minerals & Marketing (P) Ltd. & Ors.v. State of Orissa and Ors. Appellant with State of Orissa v Geomin Minerals & Marketing (P) Ltd & Ors,with POSCO India Pvt Ltd Geomin Minerals & Marketing (P) Ltd . & Ors. Respondents AIR 2013, the Supreme Court 2438, Vol.100, Part 1196, August 2013.

Subject : These appeals by special leave have been preferred against the order of Division Bench of Orissa High Court, Cuttack dated 14th July, 2010 in W.P. (C) No.23 of 2009 whereby, the writ petition preferred by Geomin Minerals & Marketing (P) Ltd. was allowed and the recommendation made by the State Government dated 9th January, 2009 in favour of POSCO India (P) Ltd. was set aside with a direction to the State Government to take a fresh decision in terms of order dated 27th September, 2007 passed by the Revisional Authority in Revision Application File No.22 (41)/2007-RC-1 by giving the Geomin Minerals & Marketing (P) Ltd. the preferential right of consideration. The Division Bench further observed that in the event the State Government decides to invoke the provisions of Section 11(5) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter, referred to as the "MM(D&R) Act") , "special reasons" for the same in terms of guidelines dated 24th June, 2009 issued by the Ministry of Mines, Government of India be recorded in writing. The State Government was directed to complete the entire exercise within specified period.

Facts:

The availability of two set of land for fresh grant of lease was notified by the State of Orissa vide Notification dated 20th August, 1991 issued under Rule 59(1) of the Mineral Concession Rules, 1960. The first set comprised of 85.60 acres plus 94.47 acres of land in Village Kansar and Village Gokhurang of Balangir District which had earlier been granted on lease in favour of Shri S.K. Padhi and Shri B.K. Agarwal. These leases were subsequently surrendered to the State Government and were, therefore, available for re-grant. The State Government, vide, notification dated 20th August, 1991 notified the availability w.e.f. 24th October,1991. The second set of land comprised of 283.06 square miles in Horomoto Guali Block, Malangtoli Block, Khandhdhar-Pahar in Block Keonjhar and Sundargarh districts, Taldihi Toda Block, Sundargarh District and Dubna Block I and III which was declared to be reserved for public sector corporations vide Notification dated 05.06.1962 and 06.12.1962. The State Government decided to de-reserve the said mineral bearing areas and the availability of the said area was notified vide Notification dated 23rd August, 1991. The date of availability for re-grant was on and from 29th October,1991. The dispute in the case of Geomin's SLP No. 31593/2010 is regarding 186 hectares of land located in village Rantha District Sundergarh. Although, the recommendation made in favour of POSCO covers an area of 2500 hectares, thus Geomin's interest is limited to a fraction of the land recommended for POSCO.

The recommendation of the State Government was set aside, vide, order dated 27th September,2007 by the Revisional Authority as all mineral concession applications were not considered simultaneously and no orders were passed on those applications.

The order passed by the Revisional Authority dated 27th September, 2007 was challenged by one 'Dhananjay Kumar Dagara' before the Orissa High Court in a Writ Petition being W.P(C) No. 15315 of 2007. It was challenged on the ground that the directions for simultaneous consideration of all applications affects the preferential rights of the first day applicants under Section 11(2) of the MM(D&R) Act. The intervention application was dismissed by the Orissa High Court on 22nd February, 2008 with the observation that Geomin Minerals & Marketing (P) Ltd may take independent steps in respect of its grievance. On 2nd May, 2008 the Orissa High Court by judgment in W.P(C) No.15315 of 2007 held that there was no preferential right

for the applicant. The High Court thus dismissed the writ petition and upheld the order of the Revisional Authority dated 27th September, 2007.

Geomin Minerals & Marketing (P) Ltd. filed another writ petition being W.P(C) No.6484 of 2008 praying expeditious disposal of all pending applications for mineral concessions filed by it, based on its right arising from Rule 63-A of the MC Rules. The said writ petition was disposed of on 14th July, 2008 by the Orissa High Court with a direction to the State Government to consider the pending PL/RP applications of Geomin Minerals & Marketing (P) Ltd. preferably within a period of six months without discrimination and in accordance with law.

In the meantime, during the pendency of the applications preferred by different persons including Geomin Minerals & Marketing (P) Ltd. For Preferential Licence ('PL' for short) and Mining Licence ('ML' for short), on 20th December, 1999 amendments carried out in Section 11 of MM(D&R) Act became effective. By the amending Act, the first proviso to Section 11(2) of MM(D&R) Act was inserted.

The non obstante clause i.e. Sub-section (4) of Section 11 was re-numbered as Sub-section (5), and a new Sub-section (4) was introduced,

Pursuant to the order of the Revisional Authority dated 27th September, 2007 passed in the case of Kudremukh Company, the State Government issued a notice to Geomin Minerals & Marketing (P) Ltd. Under Rule 12(1) of the MC Rules giving them opportunity of being heard. The officials of the Geomin Minerals & Marketing (P) Ltd. attended the hearing. Thereafter, by a minutes of the meeting, inter se merits of all applicants was prepared by the State of Orissa on 17th October, 2008, but no recommendation was made. Therefore, Geomin Minerals & Marketing (P) Ltd. filed the Writ Petition being W.P(C) No.23 of 2009.

The writ petition was filed on 5th January, 2009 by Geomin Minerals & Marketing (P) Ltd. and just after few days on 9th January, 2009, the State Government made impugned recommendation to the Central Government in favour of POSCO under Section 11(3) and (5) of the MM(D&R) Act. The said recommendation was challenged by Geomin Minerals & Marketing (P) Ltd. By filing a petition for amendment.

The learned counsel for the parties argued in detail for few days but in view of the nature of order we intend to pass it is not necessary to discuss each and every submission except the relevant one, as recorded hereunder:

Stand of POSCO India Pvt. Ltd.

Learned counsel appearing on behalf of POSCO India Pvt. Ltd. Submitted that the recommendation in favour of POSCO India has been made in accordance with the provisions contained in Section 11 (2), (3) and (5) of MM(D&R) Act and other relevant provisions of Mineral Concession Rules, 1960. The POSCO was found to be the most meritorious applicant and "hence the State Government by exercising its power under Section 11(5) of MM(D&R) Act, 1957 has decided to recommend an extent of 2500 hectares to Government of India for prior approval for grant of PL in their favour.

If the applications were to be considered simultaneously, as per the proviso to Section11(2) of the Act POSCO would be far ahead of the other applicants, based on its experience, investment, technology used, integrated project, captive use of the iron ore, total employment (direct and indirect) and, above all, public interest. Thus, Section 11(3) of the Act wholly applies in POSCO's favour.

Geomin did not have any experience of having undertaken any mining activities, and, therefore, cannot be said to have possessed any special knowledge or experience in mining operations.

Learned counsel for the Geomin Minerals & Marketing (P) Ltd. submitted that a preferential right in the field of mining is an important right. The preferential right conferred under un-amended Section 11 upto 1999 cannot be curtailed under amended Section 11. Since Geomin Minerals & Marketing (P) Ltd applied

on 29th October, 1991, the law that was applicable on the said date of application i.e. an amended Section 11 shall be applicable for consideration of application filed by Geomin Minerals & Marketing (P) Ltd. On the other hand, if the amended Section 11 is applied, in that event, the judgment of this Court in Sandur Manganese & Iron Ores Limited v. State of Karnataka (AIR 2011 SC 1206) will apply.

As per the ratio of the judgement in Sandur Manganese & Iron Ores Limited v. State of Karnataka (2010) 13 SCC 1 if amended Section 11 is applied then Geomin Minerals & Marketing (P) Ltd. is entitled for benefit of the aforesaid judgment. First Day applicant enjoys and is entitled to priority over all subsequent days applications including the POSCO application which was made on 27th September, 2005 i.e. after about 14 - year from the date of the Geomin applications.

Learned senior counsel for the State of Orissa contended as that initially a recommendation was made to the Central Government in favour of POSCO for an area of 6204.352 hectares by the State Government on 19th December, 2006. Pursuant to which the Revisional Authority after hearing the matter set aside the recommendation made in favour of POSCO and the State Government was directed vide order dated 27th September, 2007 to consider all pending applications simultaneously and to decide inter se merit and then pass an order as per law after affording an opportunity to all the applicants. Earlier, the recommendation in favour of POSCO was made for an area which was partially notified and partially non-notified and other applications were not considered and hence, the matter was remitted back by the Revisional Authority to the State Government. The State Government had thereafter, granted hearing to all the applicants and had considered the inter se merit of the applicants. An overall holistic consideration and record shows that the Government had an inter se comparison of the applicants as directed by the Central Government and had also made recommendation in favour of POSCO by invoking Section 11(5) of the MM(DR) Act, 1957.

Learned senior counsel appearing on behalf the Kudremukh Company submitted that the recommendation in favour of POSCO purportedly under Section 11(5) is not a valid recommendation as per the provisions of the Act. Section 11(5) would have no application in the present case where the applicants were being considered simultaneously and the same has to be granted to the applicant who satisfies the criteria under Section 11(3) when compared with the others. The Revisional Authority vide order dated 27.09.2007 had directed to consider all applications 'simultaneously'. Therefore, all the applications had to be considered taking into consideration the parameters of Section 11(3). The State Government itself in its recommendation dated 9.01.2009 had stated that the applicants were evaluated and taken up for disposal in accordance with Section 11(2) and (3) of the Act. But ultimately, made the purporte recommendation in favour of POSCO under Section 11(5) of the Act, which is not applicable.

Point of issue:

Whether the writ petition was premature and in case of applicants whether pre-matured Section 11 of the MMDR Act, 1957 is applicable.

Decision:

The Supreme Court has referred to Section 5, Section 11(5) of the MM(D&R) Act, and stated that in the present case the State Government has only made recommendations and has sought approval of Central Government under proviso to Section 5(1) and proviso to Section11(5) but no final decision has been taken.

The Supreme Court has further stated that until the Central Government has passed an order either granting or refusing approval under Section 5(1) and Section 11(5) of the Act, it would not be permissible for any person to file the Writ Petition under Article 226 of the Constitution of India and any such petition if filed would be premature. In the instant case, the High Court committed a grave error of law in proceeding to observe that 'special reasons' did not exist on invoking Section 11(5) and that there was no comparison of

merits in the record. The record has been shown to this Court and it is apparent that the State Government has tabulated and evaluated the inter se merits and has concluded that POSCO is more meritorious. This is also an indication that the recommendation made by the State Government does not constitute an order as envisaged by Section 30 of the Act.

The Supreme Court has also stated that this is not the stage to decide as to whether in the present case the pre-amended or amended Section 11(2) shall be applicable and thereby priority should be assigned under pre-amended or amended Section 11(2) as the matter has already been considered by the State Government and recommendation is required to be considered by the Central Government under Section 5(1) of the Act.

The Central Government is required to go through the relevant facts of each case to determine whether the recommendation is to be approved or not. While deciding the question the Central Government will keep in mind the order which was passed by the Revisional Authority(Central Government) in the case of Dagara on 2nd May, 2008.

It is well settled that no applicant has statutory or fundamental right to obtain prospecting licence or a mining lease. Therefore, the High Court before interfering with the recommendation ought to have looked into the nature of recommendation.

The Supreme Court has took the view that the High Court committed a grave error of law in deciding the case on merits and deciding the question of legality of the recommendation made by the State Government. In fact they should have left the matter to the Central Government to pass an appropriate order in accordance with law instead of entertaining a pre-mature the writ petition. The State Government by its recommendation having forwarded the tabulated chart showing inter se merit of each applicant, it was not for the High Court to sit in appeal to decide who amongst all is more meritorious and is entitled for preferential right.

The Supreme Court has set aside the impugned judgment dated 14th July, 2010 passed by the Division Bench of the Orissa High Court and remit the matter to the Central Government to consider the question of approval under Section 5(1) taking into consideration the recommendations made by the State Government. While deciding the question, it will keep in mind the objections raised by the parties. It is expected that the decision will be taken on an early date and shall be communicated to the State Government.

Lastly, the Supreme Court has allowed the appeals with the above aid observation and direction, without any order as to costs.

Appeal allowed

13. Dalpat Singh, Petitioner v. State (Mines and Geology) & Ors, Respondents, AIR 2013, Rajasthan 160, Vol.100, Part 1197, September 2013.

Subject : Appeal filed against the order dated 13.1.2012 given by the Learned Single Judge for dismissing the writ petition, as well as against the order passed by the Deputy Secretary, Department of Mines, Government of Rajasthan, Jaipur for dismissing the revision petition preferred against order dt. 10.1.2008 whereby, a quarry license of mining area was granted in favour of the Respondent No. 5.

Facts:

The petitioner was granted a quarry licence in relation to the aforesaid Quarry No.498 by an order 08.01.1998 as issued by the Assistant Mining Engineer, Balesar ("the AME"). The case of the petitioner had been that he worked at the area making it fit for excavation but the quarry licence as issued in his favour was

cancelled by the AME on 17.08.2004 under Rule 30(2) of the Rules of 1986, allegedly on the ground of default in payment of the monthly rent. The petitioner has preferred an appeal against the order dated 17.08.2004 so passed by the AME before the Additional Director (Mines), Jodhpur under Rule 43 of Rajasthan Minor Mineral Concession Rules,1986 (in short the Rules of 1986) on 08.04.2005 wherein, show-cause notices were issued on 11.04.2005 and the record was also requisitioned; and wherein, the factual report was submitted by the AME on 15.12.2005.

The Appellate Authority accepted the appeal in the manner that while setting aside the cancellation order dated 17.08.2004, recommended the matter to the AME with the directions that upon the petitioner depositing within 30 days the due rent, interest and penalty and so also the additional penalty in the sum of Rs.2,000/-, proceedings be adopted for restoration of the mining area in his favour. The Appellate Authority stated that its order would be operative only if the area in question had not been allotted in favour of anyone else and was vacant.

The petitioner made a request for compliance of the order passed by the Appellate Authority and offered the amount to be paid on 11.01.2010 but was informed that the area in question had already been granted, way back on 10.01.2008, in favour of the Respondent No.5.

The petitioner preferred a revision petition before the Government as per Rule 47 of the Rules of 1986 against the said order dated 10.01.2008 made in favour of the Respondent No.5. The Learned Deputy Secretary was of the opinion that the directions for restoration as contained in the order passed by the Appellate Authority were rendered redundant and inoperative because of the fact that the area in question had already been allotted on 10.01.2008. It was also observed that as on the date of allotment, no interim order was in operation. The petitioner's attempt to question the orders aforesaid in the writ petition failed when the learned single Judge found no case for interference in the writ jurisdiction.

The learned counsel for petitioner –appellant has contended that the petitioner has been subjected to serious prejudice in this matter only for the faults and mistakes of the AME, who failed to retain the area in question until disposal of the appeal although in such cases, as a matter of practice, the Department refrains from allotting the area in dispute until conclusion of the pending litigation. The learned counsel further contended that granting of stay or not was the matter within the jurisdiction of the Appellate Authority but the fact remains that the stay application as moved by the petitioner had not been rejected by the Appellate Authority and remained pending. According to the learned counsel, merely because the Appellate Authority took a longer time in deciding the appeal, the AME concerned could not have over-reached and could not have allotted the area to someone else so as to frustrate the cause of the petitioner. The learned counsel has further contended that the petitioner, having invested time, money and energy over the area in question for over 6 - year, deserves not be deprived of the fruits of his labour and deserves to be allowed to excavate the mineral from the area in question.

Decision:

The High Court has stated that the grant as made in favour of the petitioner was cancelled way back on 17.8.2004. Even when the petitioner filed an appeal against the order of cancellation and the appeal remained pending with requisitioning of the record and filing of factual report, it was, nevertheless, decided only on 14.12.2009, i.e. more than 5 - year after cancellation. Admittedly, there was no interim order operating during the pendency of the said appeal. Neither the Department could be faulted in declaring the area in question vacant nor the AME could be faulted in allotting the same to the Respondent No.5 when there was no interim order

operating against such allotment. The reference to notification is of no avail to the petitioner. Merely, because there in the Department, while inviting applications for grant of quarry licence, put a restriction on grant qua some of the plots, it is difficult to deduce that it is always incumbent for the Department to put the process of allotment in relation to an area in abeyance if the same is subject of a litigation. No such rule has been indicated whereby, the Department could be considered obliged to keep the area vacant merely for pendency of a litigation and without any specific order to that effect.

The High Court has found out that though the appeal filed by the petitioner was pending but there was no interim order therein. It is noticed that the area in question was declared free for grant on 24.2.2007. The petitioner could have taken appropriate steps for pressing the prayer for interim relief during pendency of appeal, if so desired. The petitioner having failed to do so and there being no interim order operating, the allotment of the area to the Respondent No.5 by the order dated 10.1.2008 after draw of lottery in her favour on 22.12.2007 cannot be said to be illegal or unauthorized from any angle. The High Court has also stated that the said order dated 14.12.2009 with all its stipulations having attained finally, neither the Revisional Authority nor the writ Court could be faulted in declining the prayer as by the Petitioner. The Respondent No.5, who had been granted the area in question by the order dated 10.1.2008 after the same, was declared free for grant on 24.2.2007, cannot be said to have committed any wrong in applying for and in getting the same in allotment. The valid grant as made in favour of the Respondent No.5 on 10.1.2008 had been in operation for more than 2 - year before the Petitioner filed the revision petition questioning the same. With efflux and passage of time, the elements of equity have also come existing in favour of the Respondent No.5 and thus, even on equity, the petitioner cannot seek dislodging of the Respondent No.5.

The High Court has held that the learned single Judge has rightly dismissed the writ petition; and there was no case for interference in the intra-court appeal.

Thus, the High Court has dismissed the appeal.

Appeal dismissed