2026:CGHC:539-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 4676 of 2022

1 - Steel Authority of India Limited Bhilai Steel Plant, Through Its Power of Attorney Holder And General Manager (Incharge Law) Bhlai Steel Plant, Ispat Bhawan, Bhilai, District Durg, Chhattisgarh.

2 - The Chief General Manager (Mines And Rowghat) Steel Authority of India Limited, Bhilai Steel Plant, Ispat Bhawan, Bhilai, District Durg Chhattisgarh.

... Petitioners

versus

1 - State of Chhattisgarh Through The Secretary , Department of Forest And Climate Change, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh.

2 - The Principal Chief Conservator of Forest Aranya Bhawan , North Block , Sector 19, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh.

3 - The Divisional Forest Officer Rajnandgaon Forest Division, Rajnandgaon, Chhattisgarh.

4 - Union of India Through Its Secretary, Ministry of Environment Forest of Climate Change, Paryavaran Bhawan, Jorbagh, New Delhi.

... Respondents

(Cause-title taken from Case Information System)

For Petitioners	:	Mr. Rajeev Shakdhar, Senior Advocate appearing through Video Conferencing assisted by Mr. Ankit Singhal, Advocate through Video Conferencing, Mr. Pawan Shree Agrawal and Mr. Ashish Mittal, Advocates
For Respondents No.1 to 3/ State	:	Mr. Praveen Das, Deputy Advocate General
For Respondent No.4/UOI	:	Mr. Ramakant Mishra, Deputy Solicitor General assisted by Ms. Annapurna Tiwari, Central Government Counsel
Date of Hearing	:	16/12/2025
Date of Judgment	:	06/01/2026

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Naresh Kumar Chandravanshi, Judge

C.A.V Order

***Per* Ramesh Sinha, Chief Justice**

1. Heard Mr. Rajeev Shakdhar, Senior Cousnel appearing through Video Conferencing assisted by Mr. Ankit Singhal, learned counsel through Video Conferencing, Mr. Pawan Shree Agrawal and Mr. Ashish Mittal, learned counsel for the petitioners. Also heard Mr. Praveen Das, learned Deputy Advocate General appearing for the State/respondents No.1 to 3 and Mr. Ramakant Mishra, learned Deputy Solicitor General with Ms. Annapurna Tiwari, learned Central Government Counsel appearing for the Union of India/respondent No.4.

2. The petitioners have filed the instant writ petition challenging the constitutional validity, legality and propriety of Rules 3 and 5 of the Chhattisgarh Transit (Forest Produce) Rules, 2001 (*hereinafter referred to as "the Rules of 2001"*), on the ground that the same are ultra vires the provisions of the Indian Forest Act, 1927 (*for short, the Act of 1927*) and Article 246 read with Schedule VII of the Constitution of India. The petitioners further assail Notification No. 06-02/2014/10-2 dated 30.06.2015, published in the Official Gazette on 10.07.2015, and Notification No. F.No. 6-2/2014/10-2/Van dated 27.07.2022, published in the Official Gazette on 04.08.2022, issued by the respondent–State, to the extent they impose fees for issuance of transit passes for transportation of iron ore at the rate of ₹15/- per ton and ₹57/- per ton, respectively. The petitioners also challenge the legality, validity and propriety of the letters dated 23.08.2022 and 02.09.2022 issued by

respondent Nos. 1 and 2, respectively, whereby directions have been issued for compliance with Notification No. F No. 6-2/2014/10-2/Van dated 27.07.2022.

3. The petitioner has prayed for the following relief(s):

> "*10.1 That this Hon'ble Court may kindly be pleased to declare that the Rule 3 and 5 of Chhattisgarh Transit (Forest Produce) Rules, 2001 is ultra vires to the Indian Forest Act 1927, the Mines and Minerals (Development and Regulation) Act. 1957 as also Articles 14,19, 265 and 301 of the Constitution of India.*
>
> *10.2 That this Hon'ble Court may kindly be pleased to declare that the notifications dated 30.6.2015 and 27.7.2022 issued in exercise of power conferred under Rule 5 of Chhattisgarh Transit (Forest Produce) Rules, 2001 is ultra vires to the principal Act i.e., Indian Forest Act 1927, the Mines and Minerals (Development and Regulation) Act. 1957 as also Articles 14,19, 265 and 301 of the Constitution of India.*
>
> *10.3 That this Hon'ble Court may further be pleased quash and set aside letters dated 23.8.2022 and 2.9.2022 issued by the Respondent No. 2 and 3 respectively;*
>
> *10.4 Cost of the petition may also be granted to the petitioner.*
>
> *10.5 Any other relief or relief(s) which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case, may also kindly be granted.*"

4. Brief facts necessary for adjudication of the present writ petition are that petitioner No.1, Steel Authority of India Limited ('SAIL'), is the successor of Hindustan Steel Limited and is a public limited Company substantially owned, controlled and supervised by the Central Government. The Bhilai

Steel Plant (for short, '*BSP*'), situated in District Durg, is one of the units of petitioner No.1 and is widely known as Bhilai Steel Plant. The petitioners hold valid mining leases for extraction of iron ore over forest land falling within the territorial jurisdiction of the Divisional Forest Offices at Rajnandgaon and Balod. The respondents are "State" within the meaning of Article 12 of the Constitution of India and are amenable to the writ jurisdiction of this Court.

5. The State of Chhattisgarh, in exercise of powers conferred under Sections 41, 42 and 76 of the Act of 1927, framed the Rules of 2001, which came into force with effect from 25.08.2001, repealing the earlier Rules of 1961. The said Rules constitute subordinate legislation deriving their authority from the Act of 1927, which permits regulation and levy of fees only in respect of forest produce in transit by land or water. The Act of 1927, being a pre-Constitution enactment, was aligned with the constitutional scheme of distribution of legislative and executive powers under the Government of India Act, 1935, which scheme has been substantially adopted under the Constitution of India, 1950, reserving taxation on goods carried by rail and air exclusively within the domain of the Union. The Act of 1927 was enacted to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce. Section 2(4) of the Act of 1927 includes minerals within the definition of "forest produce" when found in or brought from a forest. Section 41 of the Act of 1927 vests control in the State Government over timber and other forest produce in transit by land or water and authorises the State Government to frame rules regulating such transit, including the issuance of transit passes and levy of fees therefor. Chapter XII of the Act of 1927, particularly Sections 76 to 78, further empowers the State Government to frame rules to carry out the

provisions of the Act of 1927, subject to consistency with the parent statute. Rule 3 of the Rules of 2001 mandates that no forest produce shall be moved into, from or within the State of Chhattisgarh without a valid transit pass, subject to specified exemptions. In exercise of powers under Rule 5, the State Government initially issued a notification dated 14.06.2002 imposing transit fee, including on iron ore, at the rate of ₹7 per ton.

6. Subsequently, the respondents applied the said Rules to transportation of iron ore by rail, and even sought to restrain such transportation, which led to issuance of communications by Railway authorities. On 17.05.2013, a demand of ₹44,28,46,097/- was raised against the petitioners towards transit fee for the period 2001–02 to 2012–13. Aggrieved thereby, the petitioners filed W.P.(T) No. 68 of 2013 before this Court, challenging the constitutional validity of Rule 3, the notification dated 14.06.2002 and the consequential demand. Similar challenges were also raised in other writ petitions. This Court, by interim orders dated 05.07.2013 and 12.02.2014, granted protection to the petitioners from coercive recovery of past dues, subject to payment of current transit fee and furnishing of security. During pendency of the said proceedings, the State issued Notification dated 30.06.2015, superseding the earlier notification, enhancing the transit fee for iron ore to ₹15 per ton.

7. In the meanwhile, one of the connected matters, W.P.(C) No. 635 of 2013, was transferred to the Hon’ble Supreme Court and renumbered as Transferred Petition (Civil) No. 14 of 2018, which remains pending. In view thereof, this Court, by order dated 30.09.2019, disposed of the pending writ petitions, including that of the present petitioners, making the interim orders absolute and directing that the rights of the parties

shall abide by the final outcome of the proceedings before the Hon'ble Supreme Court.

8. In compliance with the said order, the petitioners continued to pay transit fee at the rate of ₹15 per ton. Thereafter, the respondent-State, in supersession of the notification dated 30.06.2015, issued the impugned Notification No. F.No.6-2/2014/10-2/Van dated 27.07.2022, published on 04.08.2022, enhancing the transit fee for iron ore to ₹57 per ton. Consequential letters dated 23.08.2022 and 02.09.2022 were issued by the respondents directing compliance with the said notification.

9. Aggrieved by the enhancement of transit fee and inclusion of minerals within the ambit of the impugned notifications, the petitioners have approached this Court contending that the impugned Rules and notifications, insofar as they seek to levy transit fee on transportation of minerals including iron ore, are unconstitutional, ultra vires the Act of 1927, and violative of Articles 14, 19, 265 and 301 of the Constitution of India, and therefore liable to be quashed.

10. Mr. Rajeev Shakdhar, learned Senior Counsel appearing through Video Conferencing, assisted by Mr. Ankit Singhal, learned counsel through Video Conferencing, Mr. Pawan Shree Agrawal and Mr. Ashish Mittal, learned counsel appearing for the petitioners, would submit that the action of the respondents in levying and recovering transit fee on transportation of iron ore is arbitrary, illegal and contrary to the law applicable to the facts and circumstances of the case. Learned Senior Counsel would contend that the levy of transit fee in the present case is *ex facie* illegal and unconstitutional, inasmuch as the iron ore extracted from forest land is transported to non-forest land exclusively through Railways. The scheme of the Act of 1927 and the Rules of 2001 does not

permit levy of any fee in respect of transportation by rail, and therefore the impugned levy is wholly without authority of law.

11. Mr. Shakdhar would further submit that the so-called transit fee is, in substance, a tax, which cannot be imposed or recovered in the absence of a valid legislative sanction. It is a settled principle of constitutional law that no tax can be levied or collected except by authority of law. In the present case, the respondents have attempted to levy and recover transit fee in contravention of the parent statute and the Rules framed thereunder, resulting in unjust enrichment of the State. He would submit that the recovery of transit fee is also hit by the doctrine of unjust enrichment, as no corresponding service is rendered by the State. The inclusion of minerals in the impugned notifications dated 30.06.2015 and 27.07.2022 is arbitrary, unconstitutional and violative of Article 14 of the Constitution of India. Minerals, by their very nature, origin and composition, are not forest produce and cannot be artificially brought within the definition of forest produce by executive notification issued under Rule 5 of the Rules.

12. It is contended by Mr. Shakdhar that treating minerals as forest produce results in clubbing together dissimilar and unrelated classes, which is impermissible under Article 14 of the Constitution. Naming minerals as “forest produce” in the impugned notifications is arbitrary and against the constitutional mandate. The impugned notifications are also void under Article 254 of the Constitution of India, as they are repugnant to Central legislation occupying the same field. He would further argue that the impugned levy cannot be sustained even with reference to Entry 50 of List II of the VII Schedule. With the introduction of Entry 17-A in the Concurrent List and the enactment of the Forest (Conservation) Act,

1980 (*for short, the Act of 1980*) by Parliament, the entire field relating to diversion of forest land for non-forest use, payments in respect thereof and conservation measures stands occupied by Central legislation. By virtue of Article 254(1) of the Constitution, the doctrine of occupied field applies, rendering the impugned notifications repugnant and void.

13. It is also submitted by Mr. Shakdhar that iron ore is a major mineral governed by the Mines and Minerals (Development and Regulation) Act, 1957 (*for short, the MMRD Act*), which is a complete and exhaustive Code. The State Government is denuded of any competence to impose any levy, in the garb of transit fee, on tonnage basis in respect of a scheduled major mineral. The impugned notifications directly impinge upon the field exclusively occupied by the MMDR Act and the Act of 1980. He would submit that under Section 31 of the Act of 1927, only the Central Government is competent to impose any substantive levy by way of duty on forest produce. Section 41 of the Act of 1927 does not authorise the State Government to impose any substantive levy, much less on tonnage basis at the rate of ₹57 per ton. The impugned levy, in its pith and substance, is a tax on major minerals and is therefore beyond the legislative competence of the State.

14. It is urged by Mr. Shakdhar that Section 41 of the Act of 1927 does not permit any discriminatory levy and the impugned notifications constitute a colourable exercise of power. In any event, Rule 5 of the Rules of 2001 authorises fixation of rates only in accordance with Rule 4 of the Rules of 2001, which deals with timber and fuel and not with major minerals. Rule 7 of the Rules of 2001 contemplates issuance of transit pass on “load” basis, meaning thereby that any fee, if at all permissible, could only be vehicle-based and not tonnage-based. He would submit that application

of the impugned notifications would result in hostile discrimination against mine holders operating in forest areas vis-à-vis those operating in non-forest areas. The purpose of the Act of 1927 and the Rules of 2001 is merely regulatory, namely to prevent unauthorised movement of forest produce, and not to impose a tax on its movement. The levy lacks any element of *quid pro quo* and bears no correlation with the cost of services, if any, rendered by the State for issuance of transit passes. It is further contended that once forest land is diverted for non-forest use, it loses its character as forest land and the Rules of 2001 cease to apply. The impugned levy imposes unreasonable restrictions on trade and commerce, violating Articles 19(1)(g), 19(1)(d) and 301 of the Constitution of India. Under the guise of a fee, the respondents are, in effect, levying a duty or tax on major minerals, which is impermissible in law.

15. Mr. Shakdhar, learned Senior Counsel would also submit that Rule 3 and Rule 5 of the Rules of 2001 suffer from the vice of excessive delegation and sub-delegation. While Section 41 of the Act of 1927 permits framing of rules, the State Government has further delegated to itself or its officers the unguided power to fix rates of transit fee without any statutory control or guidelines, rendering the Rules arbitrary and unconstitutional. It is lastly submitted that the impugned letters dated 23.08.2022 and 02.09.2022 (Annexure P/11 collectively) are equally unsustainable, as the impugned notification does not contemplate levy of any fee for transportation by Rail. The respondents also failed to appreciate that the issue of legislative competence of the State Government to levy transit fee is still pending consideration before the Hon’ble Supreme Court. Issuance of the impugned notification dated 27.07.2022 during pendency of proceedings before the Apex Court is arbitrary, *per se* illegal and liable

to be quashed.

16. Reliance has been placed upon the judgment rendered by the Allahabad High Court in the matter of ***Hindalco Industries Limited v. State of U.P. and others,*** {2018 SCC OnLine All 5810} to buttress his submissions. Learned Senior Counsel further argued that being aggrieved with the aforesaid judgment, the State of Uttar Pradesh has preferred an Special Leave Petition (Civil) Diary No.18473/2020 before the Hon'ble Apex Court, which was dismissed vide order dated 04.07.2023 and as such, the order passed by the Allahabad High Court has attained finality.

17. On the other hand, Mr. Praveen Das, learned Deputy Advocate General, appearing for the State/respondents No.1 to 3 would oppose the submissions advanced by learned Senior Counsel appearing for the petitioner and submit that the entire writ petition, which seeks to challenge the vires of Rules 3 and 5 of the Rules of 2001, is wholly misconceived and deserves to be dismissed at the threshold. He would submit that the petitioner has fundamentally misread and misconstrued the scope and object of the parent legislation, namely the Indian Forest Act, 1927, under which ample power has been conferred upon the State Government to regulate the transit of forest produce and to levy fees in that regard. It is contended that the Act of 1927 was enacted to consolidate the law relating to forests, transit of forest produce and the duties leviable thereon, and Section 2(iv) thereof expressly includes *minerals* within the definition of "forest produce". Therefore, the challenge raised by the petitioner on the premise that minerals cannot be treated as forest produce is legally untenable. It is further submitted that Chapter VII of the Act of 1927, particularly Section 41, vests the State

Government with wide powers to make rules regulating the transit of forest produce. Sub-section (2) of Section 41 specifically authorises the State to provide for payment of fees for the issue of transit passes, and sub-section (3) empowers the State to grant exemptions in appropriate cases. Exercising these statutory powers, and read with the general rule-making power under Section 76, the State Government has validly framed the Rules of 2001. Rule 3 of the Rules of 2001 mandates regulation of transit through passes, while Rule 5 of the Rules of 2001 authorises the State to fix the rate of fee from time to time. Hence, both Rules 3 and 5 of the Rules of 2001 are squarely traceable to the parent Act of 1927 and cannot be termed *ultra vires*.

18. Mr. Das submits that the petitioner's argument based on Entries 89 of List I and 56 of List II of Schedule VII is misplaced. Section 41 of the Act of 1927 uses the expression "*transit by land or water*", which is of wide amplitude and necessarily includes transportation by road as well as by rail. There is no statutory restriction excluding rail transport from the scope of regulation under Section 41, and therefore the contention that the State lacks competence to regulate transit of forest produce by rail is wholly erroneous. It is submitted that the plea of repugnancy under Article 254 of the Constitution of India, based on the MMRD Act, is devoid of substance. The Act of 1927 is a pre-Constitutional legislation, saved by Article 372 of the Constitution, and continues to operate unless repealed or amended by a competent legislature. The Act of 1927 and the MMDR Act operate in distinct and separate fields, the former concerns forests and forest produce (including incidental regulation of transit), whereas the latter governs mining and mineral development. Since the two enactments do not occupy the same field, the question of repugnancy does not arise.

19. In support of his submissions, learned Deputy Advocate General places strong reliance upon the authoritative pronouncement of the Hon'ble Supreme Court in ***State of Uttarakhand v. Kumaon Stone Crusher (2018) 14 SCC 537***, wherein the vires of Section 41 of the Act of 1927 and *pari materia* transit rules framed by the State of Madhya Pradesh, were upheld. The Hon'ble Supreme Court categorically held that the State Government is fully empowered to levy transit fees under Rule 5 of the Rules of 2001 and that such levy is well within the scope of Section 41 of the Act of 1927. It is submitted that the ratio laid down in the said judgment squarely covers the issues raised in the present petition, rendering the challenge to Rules 3 and 5 of the Rules of 2001 wholly untenable.

20. Mr. Das further submits that the contention regarding absence of *quid pro quo* is equally unsustainable, as the levy in question is a regulatory fee imposed for effective control and monitoring of forest produce in transit, and strict mathematical equivalence between the fee and services rendered is not required in law. In view of the settled legal position and the binding precedent of the Hon'ble Supreme Court, it is submitted that the challenge raised by the petitioner is frivolous, misconceived and an abuse of the process of law. Consequently, the writ petition, being devoid of merit, deserves to be dismissed with costs.

21. Placing reliance on the rejoinder-affidavit on record, learned Senior Advocate appearing for the petitioners would submit that the stand taken by the respondents in their reply is wholly misconceived, legally untenable and proceeds on a complete misreading of the statutory framework as well as the constitutional scheme of distribution of legislative powers. Mr. Shakdhar would contend that Rules 3 and 5 of

Rules of 2001 do not apply to the transit of forest produce by Railways, and therefore any demand of transit fee on iron ore transported through railways is *ex facie* unconstitutional and violative of Articles 14, 19(1)(g), 265, 301 and 304 of the Constitution of India. He would urge that the consequential Notifications dated 30.06.2015 and 27.07.2022, in so far as they are sought to be applied to railway transportation, amount to a colourable exercise of subordinate legislative power in a field exclusively reserved for the Union. He would further submit that the respondents' reliance on Section 41 read with Section 76 of the Act of 1927 and Article 372 of the Constitution is misplaced. Article 372 of the Constitution does not sanctify the continued operation of pre-constitutional laws in derogation of the constitutional distribution of legislative powers under Articles 245 and 246 read with the VII Schedule. Any interpretation of the Rules of 2001 so as to include Railway transport would render them unconstitutional and *ultra vires*; hence, such an interpretation must be avoided. He would emphasizes that Section 41 of the Act of 1927 consciously restricts the State's regulatory power to transit "by land or water", and the deliberate omission of Railways signifies legislative intent consistent with the demarcation under Entries 13 and 56 of List II and Entries 22, 30 and 89 of List I. Consequently, the State lacks legislative competence to regulate or levy any fee on forest produce transported by Rail.

22. Placing reliance on ***Hindalco Industries Limited*** (supra), Mr. Shakdhar would submit that the charging and computation mechanism under the transit rules contemplates only land-based modes such as lorry, cart or head load, and does not envisage railway transport. In the absence of a workable computation and collection mechanism, no levy can be sustained in law. It is further submitted that the respondents' reliance on

Kumaon Stone Crusher (supra) is misconceived, as the said judgment dealt with regulation of forest produce transported by road within forest areas and cannot be extended to railway transportation of minerals, which falls outside the scope of Section 41 of the Act of 1927. Even otherwise, the levy impugned herein bears no nexus with any regulatory service rendered by the Forest Department and thus violates the doctrine of *quid pro quo*, amounting in substance to an unauthorized tax barred by Article 265 of the Constitution.

23. In essence, Mr. Shakdhar would submit that the Rules of 2001 and the notifications dated 30.06.2015 and 27.07.2022 do not apply to, nor can they be construed to cover, transit of forest produce by Railways, and any such application would render them unconstitutional, *ultra vires* the Act of 1927 and beyond the legislative competence of the State.

24. We have heard learned counsel for the parties, perused the pleadings and materials available on record.

25. The principal questions that arise for consideration in the present writ petition are:

> *(i) Whether Rules 3 and 5 of the Rules of 2001, insofar as they are applied to transportation of iron ore by Railways, are ultra vires the Act of 1927 and the Constitution of India;*
>
> *(ii) Whether the impugned Notifications dated 30.06.2015 and 27.07.2022 levying transit fee on iron ore on a tonnage basis are beyond the scope of Section 41 of the Act of 1927;*

(iii) Whether the impugned levy is, in pith and substance, a tax lacking authority of law and violative of Articles 14, 19(1)(g), 265 and 301 of the Constitution of India.

26. At this juncture, it would be apposite to advert to and reproduce the relevant provisions of the Act of 1927, which have a direct bearing on the controversy involved in the present writ petition.

27. Chapter II of the Indian Forest Act, 1927 deals with 'reserved forests' while Chapter III deals with 'village forests'. Chapter IV deals with 'protected forests' and while Chapter V deals with 'control over forests and lands not being the property of the Government'. Chapter VI provides for levy of 'duty on timber and other forest- produce'. Chapter VI provides for 'control on timber and other forest-produce in transit'. Chapter VIII deals with 'collection of drift timber and stranded timber'. Chapters IX, XI and XIII contain machinery provisions. A bare perusal of the said provisions makes it clear the Act of 1927 is designed to protect and increase the forest wealth and its proper utilization for the purposes of the State and the people.

28. Section 2(4) of the Act reads as under:-

"***2. Interpretation clause****. - In this Act, unless there is anything repugnant in the subject or context,-*

xxx xxx xxx

(4) "forest-produce" includes-

(a) xxx xxx xxx

(b) the following when found in, or brought from a forest, that is to say:

(ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) peat, surface soil, rock, and minerals including limestone, laterite, mineral oils, and all products of mines or quarries);

v) xxx xxxx xxx"

29. Though Section 2(4) of the Act of 1927 includes minerals within the definition of "forest produce" when found in or brought from a forest, such inclusion cannot be read in isolation or dehors constitutional limitations. The definition is contextual and must be harmonised with the object of the Act, which is conservation and regulation of forests and forest produce, not fiscal extraction from mining activity.

30. Once forest land is lawfully diverted for non-forest use under the Act of 1980, and mining is undertaken pursuant to valid leases governed by the MMDR Act, the activity is regulated by a complete and exhaustive Central legislation. Any further levy by the State, in the guise of a transit fee, directly impinges upon a field already occupied by Parliament.

31. Section 41 of the Act of 1927 vests in the State Government, control of all rivers and their banks as regards the floating of timber as well as the control of all timber and other forest produce in transit by land or water. It also empowers the State Government to make rules "to regulate the transit of all timber and other forest-produce". Sub-section (2) elucidates several matters in respect of which rules can be framed. When the Section 41 itself defines the legislative competency of State only to the extent of transit by road and water ways, any notification must confine to transit of forest produce by road and water ways. It would be appropriate to reproduce Section 41 of the Act of 1927, in its entirety:-

"***41. Power to make rules to regulate transit of forest produce****.- (1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is*

vested in the State Government, and it may make rules to regulate the transit of all timber and other forest-produce.

(2) In particular and without prejudice to the generality of the foregoing power such rules may-

(a) Prescribe the routes by which alone timber or other forest-produce may be imported exported or moved into, from or within the State;

(b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

(c) Provide for the issue, production and return of such passes and for the payment of fees therefore;

(d) provide for the stoppage, reporting, examination and marking of timber of other forest-produce in transit, in respect of which there is reason to believe that any money is payable to the Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark;

(e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it, and the condition under which such timber or other produce shall be brought to, stored at and removed from such depots;

(h) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;

(g) Provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated same;

(h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or marking of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;

(i) regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

(3) The State Government may direct that any rule made under this Section shall not apply to any specified class of timber or other forest-produce or to any specified local area."

32. Chapter XII of the Act of 1927 confers an additional power upon the State Government to make rules. Sections 76, 77 and 78 occurring therein read as follows:

*"**76. Additional powers to make rules** – the State Government may make rules-*

(a) to prescribe and limit the powers and duties of any Forest Officer under this Act;

(b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscation under this Act;

(c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on land belonging to or in the occupation of private persons; and

(d) generally, to carry out the provisions of this Act.

***77. Penalties for breach of rules** - Any person contravening any rule under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.*

***78. Rules when to have force of law** - All rules made by the State Government under this Act shall be published in the Official Gazette, shall thereupon, so far as they are consistent with this Act, have effect as if enacted therein."*

33. Section 41 of the Act of 1927 empowers the State Government to make rules to regulate the transit of timber and other forest produce “by land or water” and to provide for payment of fees for the issue of transit passes. The power conferred is regulatory in nature and must be strictly construed, being a delegated legislative power traceable to a statute enacted in a pre-Constitutional framework. The expression “by land or water” occurring in Section 41 cannot be expansively interpreted to include railway transportation. Railways constitute a distinct mode of transport constitutionally demarcated under the Union List. Any interpretation which brings railway transportation within the sweep of Section 41 would render the provision constitutionally vulnerable, as it would trench upon a field reserved exclusively for the Union under Articles 245 and 246 read with Schedule VII. It is a settled principle of statutory interpretation that when two interpretations are possible, the one which preserves the constitutionality of the provision must be preferred. Therefore, Section 41 must be read as authorising regulation of transit by conventional land-based modes such as carts, trucks or head-loads, and by water routes, but not by rail.

34. The scheme of the Rules of 2001 reinforces this interpretation. The computation mechanism contemplated therein proceeds on the basis of “load”, vehicle movement and check-post regulation, all of which are wholly incompatible with railway transportation. In the absence of a workable statutory mechanism, no levy can be sustained.

35. A close reading of Sections 41 and 76 of the Act of 1927 discloses that besides vesting total control over the forest-produce in the State Government and empowering it to regulate the transit of all timber or other forest-produce, the State Government is also empowered to make

rules ‘generally’, to carry out the provisions of this Act". Thus, any rule made by the State Government which purports to give effect to any of its provisions would be within the four corners of the Act.

36. Further, Rule 3 of the Rules of 2001 provides that no forest produce shall be moved into or from or within the State of Chhattisgarh without a transit pass in form annexed to these rules from an officer of the Forest Department or a person duly authorized by or under these rules to issue such pass or otherwise than in accordance with the conditions of such pass or any route or to any destination other than the route or destination specified in such pass. The Rule 3 is reproduced as below:

> “***3. Regulation of transit of forest produce by means of passes*** *- No forest produce shall be moved into or outside the state of within the state of Chhattisgarh except in the manner as hereinafter provided without a transit pass in Form A, B, or C annexed to these rules. The transit pass will be issued by a forest officer or gram panchayat or a person duly authorised under these rules to issue such pass;*
>
> *Provided that no transit pass shall be required for the removal -*
>
> *(a) of any forest produce which is being removed for bonafide domestic consumption of any person in exercise of a privilege granted in this behalf by the State Government, or of a right recognized under the Act within the limits of a village in which it is produced;*
>
> *(b) of such forest produce as may be exempted by the State Government from the operation of these rules by notification in the Official Gazette;*
>
> *(c) of forest produce covered by money receipt/rated passes/ forest produce passes/carting challan, issued by competent authority in accordance with the Rules made in this behalf for the time being in force.*
>
> *(d) Of minor forest produce from forests to the local*

market to the collection centre or for bonafide domestic consumption."

37. The Hon'ble High Court of Allahabad in ***Hindalco Industries Limited*** (supra) while dealing with the similar issue, has observed as follows :-

"19. A bare reading of Rule 5 would reveal that it contemplates of charging transit fee on the forest produce on the basis of Lorry load, Cart load, Camel load; and head load. It does not provide for levy of transit fee on the basis of quantity or weight etc, rather on the basis of capacity of a lorry and cart etc., and at a fixed rate per Camel load or per head load. It does not even contemplate to charge transit fee on transportation of various forest forest produce by any other mode such as Railways or ARW and BPC system.

20. The aforesaid Rules are in the nature of a taxing statute and as such have to be construed strictly in accordance with the usage of language therein putting the tax payer in a advantageous position if the situation so demands.

21. In State of Maharastra Vs. Mishri Lal Tarachand AIR 1964 SC 457 while interpreting the provisions of the Bombay Court fees Act, the Court observed as under:-

"The Act is a taxing statute and its provisions therefore have to be construed strictly, in favour of the subject-litigant."

22. In Diwan Brothers Vs. Central Bank of India and others AIR 1976 SC 1503 it was again observed that it is well settled that in case of fiscal statute the provisions must be strictly interpreted giving every benefit of doubt to the subject.

23. The above observations made by the Supreme Court manifestly reveal that the Courts have to interpret the provisions of the fiscal statute strictly so as to give the benefit of doubt to the litigant/assessee/tax payer.

24. It may be important to mention here that normally in a fiscal statute the charging section and the computing provision are different but in the case at hand Rule 5 of the Rules is both the

charging section as well as the provision for computing the transit fee. The manner of computation as provided therein is not applicable, as there is no transportation of forest produce by either of the modes prescribed therein and as such transit fee would not be leviable on the transport of coal through Railways or AWR and BPC system.

25. In C.I.T Bangalore Vs. B.C. Srinivasa Setty (1981) 2 SCC 460 it has been observed that the charging section and the computation provision of a fiscal statute constitute an integrated code and when it is not possible to apply the computation provision, it means that the statute do not intend to levy tax.

26. In Tata Sky Limited Vs. State of Madhya Pradesh and others (2013) 4 SCC 656 it was again observed that it is well settled that if the collection machinery directed under the Act is such that it can not be applied to an event, it follows that the event is beyond the charge created by the taxing statute.

27. In observing the aforesaid, the Apex Court not only relied upon C.I.T Bangalore Vs. B.C. Srinivasa Setty (supra) but also upon the CIT Vs. Official Liquidator (1985) 1 SCC 45 and Punjab National Bank Vs. CIT (2008) 13 SCC 94.

28. In A.V. Fernandez Vs. State of Kerala AIR 1957 SC 657 while interpreting the fiscal statues the Apex Court observed as under:-

> *"It is no doubt true that in construing fiscal statues and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."*

29. In view of the above decisions it is clear that computation of

transit fee on the transport of forest produce/coal as per Rule 5 of the Rules has to be done on the basis of Lorry load, Cart load, Camel load and head load and not otherwise. There is no machinery for assessing the transit fee on the transportation of forest produce/coal by Railway or ARW and BPC system. Therefore, transportation of forest produce/coal by the said modes is beyond the purview of transit fee.

30. Let us also examine the contention of the defendants that a railway wagon would also be a lorry. Therefore, any transportation of coal through railway wagon would be amenable to payment of transit fee under Rule 5 of the Rules.

31. In CST Vs. Jaswant Singh Charan Singh AIR 1967 SC 1454 it was held that while interpreting items in fiscal statutes resort should not be had to the scientific or technical meanings of the terms used therein but to their popular meaning or the meaning attached to them by persons dealing with those terms in a commercial sense.

32. In CST Vs. G.S. Pai and Company AIR 1980 SC 611 it was again laid down that while interpreting entries in taxing legislation, it should be borne in mind that the words used in the entries must be construed not in technical sense but as understood in common parlance.

33. In Indian Cable Co. Ltd. Vs. CCE (1994) 6 SCC 610 it was held that in construing the relevant item or entry in a fiscal statute, the authority concerned must normally construed it in the manner, it is understood in common parlance or in commercial world or trade circles or in the manner, if it is one of everyday use. In other words the item or entry must be given its popular meaning rather than its technical or scientific. This was laid down by following the approach of Lord Esher in Unwin Vs. Hanson (1891) 2 QB 115.

34. The Supreme Court in Associated Cement Co. Ltd Vs. State of M.P. and others (2004) 9 SCC 727 relying upon CST Vs. Jaswant Singh Charan Singh (Supra), Minerals and Metals Trading Corporation of India Ltd. Vs. Union of India (1972) 2

SCC 620, Royal Hatcheries (P) Ltd. Vs. State of Andhra Pradesh 1994 Supp. (1) SCC 429 and Dunlop India Ltd. Vs. Union of India (1976) 2 SCC 241 reiterated the principle of interpretation that the relevant item or entry in a fiscal statute is to be considered as it is one of everyday use by giving a popular meaning rather in scientific or technical sense.

35. A similar view was expressed in Pleasantime Products Vs. CCE, (2010) 1 SCC 265 and it was held that the test of "common parlance" ought to be applied in interpreting the meaning of any word appearing in the taxing legislation.

36. In short all the above decisions point out that the meaning of any word used in taxing statute or in any entry thereof has to be as it is understood in "common parlance" in day-to-day life.

37. In this context, now we have to examine the meaning of the word 'lorry' as used in Rule 5 of the Rules and if it includes within its ambit the railway wagon.

38. The word 'lorry' in his historical form refers to horse-drawn vehicles used for carrying goods as a trolley. It used to be a wooden version of modern car carrying trailer. Later, lorry developed into a sturdier form of a carriage meant for carrying heavier motorcars. They were primarily used as a urban vehicle on paved roads. Subsequently, motor-propelled lorry in the shape of trucks came to be developed.

39. In Britain "lorry" nowadays means any large powered truck. In other words lorry and truck are synonymous these days.

40. A "lorry" is ordinarily defined as a large truck designed to carry heavy loads usually without any sides. It is basically a truck designed to carry freight or goods or to perform special services such as fire fighting.

41. The Cambridge English Dictionary gives the meaning of the "lorry" as a large road vehicle that is used for transporting goods.

42. Collins Cobuild Advanced Learner's English Dictionary 4th Edition 2003 gives the meaning of the word 'Lorry' as a large

vehicle that is used to transport goods by road.

43. Oxford English-English-Hindi Dictionary first published in 2008 in its 26th impression February 2013 printed by Oxford University Press also gives the meaning of the word 'Lorry' as a large strong motor vehicle that is used by carrying goods by road.

44. Chambers Encyclopedic English Dictionary first published by Chambers in 1994 describes 'Lorry' as large heavily built road vehicle for transporting heavy loads. Similarly, The Oxford Thesaurus and Word Power Guide defines 'Lorry' as a large, heavy motor-vehicle for transporting goods and troops. It is primarily a heavy truck and is understood as such in common parlance. It does not include a railway wagon, therefore, the use of the word "lorry" in Rule 5 of the Rules would be confined in reference to trucks and would not refer to the railway wagons.

45. Accordingly, the answer to the issue/question no. 1 as formulated in the earlier part of the judgment is that the Rules do not provide for charging transit fee on the transport of forest produce/coal by rail or through AWR and BPC system and as such is outside the purview of transit fee.

46. A reading of Rule 15 and 17 of the Rules make it clear that the Conservator of Forest is the person authorized to establish check posts and depots. According to Rule 17 each check post or the depots is to be managed by an officer appointed by or under the order of the Conservator of Forest or the Divisional Forest Officer. Thus, the check posts or depots have been kept under supervision, control or charge of an officer to be appointed by the Conservator of Forest or the Divisional Forest Officer of the Forest Department.

47. Rule 5 provides for payment of transit fee on the check posts or depots. Thus, obviously transit fee, if at all, has to be collected by the authorized officer of the Forest Department.

48. The Regional Officer, Sonebhadra vide letter dated 11th July 2003 addressed to the NCL on the basis of the letter of the Chief Secretary, U.P. Government dated 14th June 1999 has

intimated the NCL that transit fee @ Rs. 5 per ton is realizable on coal mind from its collaries and therefore the requisite amount for the years 1999-2000 and 2000-2001 be paid by the department.

49. The notice dated 12th May 2008 again of the Regional Forest Officer addressed to the NCL directs it to provide with the necessary amount failing which the Railway rakes would be ceased under Section 52 of the Forest Act. Similar letters of the year 2010 directing for realizing Rs. 38/- per tonne for the coal mines have also been produced and relied upon.

50. Under the Rules we were unable to find any provision which authorizes the NCL to deduct, collect or realize the transit fee from the petitioner. The above letters are only demand letters which do not authorizes the NCL to collect transit fee from the purchasers of the coal. In the absence of any Rule or any authorization by the Conservator of Forest or the Divisional Forest Officer authorizing the General Manager, NCL to realize the transit fee from the petitioner, we are of the opinion that the NCL has no authority of law to make any deduction or to realize transit fee from the petitioner not even on the basis of the letters referred to above.

51. The above discussion leads us to answer the second issue/question in favour of the petitioner and we hold that the NCL has no authority to collect the transit fee as it has not been authorized to do so by any competent officer of the forest department.

52. The ancillary issue that the dispute, if any, regarding payment of statutory dues is a subject matter of arbitration, we are of the opinion that the submission in this regard is completely mis-conceived and is not tenable in law.

53. In the present case there is no dispute regarding payment of statutory charges between the parties to the contract rather the petitioner is challenging the authority of the forest department in levying and realizing transit fee through the NCL. Thus, the issue is purely legal in nature and beyond reference to any

arbitration. If the Statute does not provide for charging of transit fee on transportation of coal by AWR and BPC system or Railways and there is no statutory liability upon the petitioner to pay it, the same can not be realized by NCL under the contract and would thus be not referable as a dispute for adjudication to the arbitration.

54. In view of the aforesaid facts and circumstances, the respondents are not competent to realize transit fee on the transport of coal by rail or through AWR and BPC system.

55. The writ petitions accordingly stand allowed and a mandamus is issued to the respondents not to realise any transit fee from the petitioner on the transportation of coal through rail mode or AWR and BPC system."

38. Reverting to the facts of the present case, it is not in dispute that the petitioners are engaged in lawful mining operations pursuant to valid mining leases and statutory clearances, and that the iron ore extracted from forest land is transported to non-forest destinations exclusively through the railway network.

39. In the present case, the iron ore is being transported by way of Railways and the field of 'Railway' falls within the Central Government. In List I of the VII Schedule of the Constitution, 'Railway' finds place at Entry No. 22 of the Union List and Entry 89 of the said list provides for 'Terminal taxes on goods or passengers, carried by railway, sea or air taxes on railway fares and freights' meaning thereby that on the iron ore transported through Railways, no transit fee can be imposed by the State Government when transported through Railways.

40. List II, State List of the VII Schedule, Entry 50 provides for taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. The present is a case where the mineral

is being treated as a forest produce and as such, levy of any transit fee by the State Government on the mineral transported through Railways, cannot be justified.

41. Though styled as a "transit fee", the impugned levy is imposed on a tonnage basis at a uniform rate of ₹57 per ton, without any correlation to the cost of regulation or services rendered. The levy is not vehicle-based, route-based or transaction-specific, but is directly linked to quantity of mineral transported. Such a levy, in pith and substance, bears the characteristics of a tax rather than a regulatory fee. It is trite law that nomenclature is not determinative, and the Court must examine the true nature of the impost. The absence of any discernible quid pro quo, coupled with the scale and structure of the levy, leads to an irresistible conclusion that the impost is fiscal in nature.

42. Article 265 of the Constitution mandates that no tax shall be levied or collected except by authority of law. In the present case, neither Section 41 of the Act of 1927 nor the Rules of 2001 authorise imposition of a substantive tax on minerals, much less on a tonnage basis. The impugned Notifications, therefore, lack statutory foundation.

43. The impugned Notifications treat minerals on par with timber and other forest produce without any rational classification or *intelligible differentia.* Mining operations governed by Central legislation are clubbed with traditional forest produce, leading to hostile discrimination against lease-holders operating in forest areas. The levy also disproportionately burdens entities transporting minerals by Rail, despite the absence of any regulatory role played by the Forest Department in such transportation. Such arbitrary and unequal treatment offends Article 14 of the Constitution.

44. As has been authoritatively held by the Allahabad High Court in ***Hindalco Industries Limited*** (supra), the transit rules framed under Section 41 of the Indian Forest Act, 1927 are in the nature of a fiscal statute and, therefore, must be strictly construed. The charging provision and the computation mechanism form an integrated code, and where the machinery for computation fails or is incapable of application to a particular mode of transport, the levy itself must necessarily fail. The said judgment, which has attained finality upon dismissal of the Special Leave Petition preferred by the State of Uttar Pradesh, squarely applies to the controversy at hand.

45. Applying the aforesaid principles, this Court finds that Rules 3 and 5 of the Rules, 2001 do not envisage, either expressly or by necessary implication, the levy of transit fee on transportation of forest produce or minerals by railways. The computation mechanism prescribed under Rule 5 is wholly inapplicable to railway transportation, and there exists no statutory machinery under the Rules for assessment, levy or collection of transit fee in respect thereof. Any attempt to extend the scope of the Rules to railway transport would amount to rewriting the subordinate legislation, which is impermissible in law.

46. This Court further finds substance in the contention of the petitioners that the impugned Notifications dated 30.06.2015 and 27.07.2022, insofar as they seek to levy transit fee on iron ore on a tonnage basis, travel beyond the rule-making power conferred under Section 41 of the Act of 1927. The said levy, in pith and substance, partakes the character of a tax on minerals, for which the State Government lacks legislative competence. The levy also fails to satisfy the essential attributes of a regulatory fee, there being no discernible *quid pro quo* or nexus with any service

rendered by the Forest Department in relation to railway transportation.

47. The reliance placed by the respondents on ***Kumaon Stone Crusher*** (supra) is misconceived. The said decision dealt with regulation and levy in the context of road-based transportation of forest produce and cannot be extended to validate a levy on railway transportation, which stands on an entirely different constitutional and statutory footing. The said judgment does not dilute the settled principle that in the absence of a workable charging and computation mechanism, no fiscal levy can be sustained.

48. This Court is also of the considered opinion that the impugned action of the respondents suffers from the vice of lack of authority of law, rendering it violative of Article 265 of the Constitution of India. The consequential letters dated 23.08.2022 and 02.09.2022, being founded entirely upon the impugned notification dated 27.07.2022, are equally unsustainable and liable to be quashed.

49. In view of the foregoing discussion, and respectfully following the ratio laid down in ***Hindalco Industries Limited*** (supra), this Court holds that:

(i) The Rules of 2001 do not provide for levy of transit fee on transportation of forest produce or minerals by Railways;

(ii) The Notifications dated 30.06.2015 and 27.07.2022, insofar as they seek to levy transit fee on iron ore transported by rail, are *ultra vires* the Act of 1927 and beyond the legislative competence of the State; and

(iii) The respondents/State have no authority to demand or realise transit fee from the petitioners in respect of transportation of iron ore by rail.

50. Consequently, the writ petition deserves to be and is hereby **allowed**. The impugned Notifications dated 30.06.2015 and 27.07.2022, and the consequential letters dated 23.08.2022 and 02.09.2022, are quashed and set aside, insofar as they relate to levy and recovery of transit fee on transportation of iron ore by Railways.

51. There shall be no order as to costs.

Sd/-
(Naresh Kumar Chandravanshi)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Anu / Amit

Head Note

Section 41 of the Indian Forest Act, 1927 empowers the State to regulate transit of forest produce “by land or water”. The expression cannot be expansively interpreted to include railway transportation, which falls exclusively within the Union List. Any such interpretation would render the provision constitutionally infirm.