REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1494 OF 2008

State of Rajasthan & Ors. .....APPELLANTS

VERSUS

Hindustan Zinc Ltd. & Anr. ....RESPONDENTS

WITH

CIVIL APPEAL NO. 1526 OF 2008

J U D G M E N T

ANIL R. DAVE, J.

1. 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.

2. 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.

3. 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.

4. As Civil Appeal No. 1494 of 2008 filed by the State of Rajasthan is the main appeal, we would like to deal with the said

appeal at the first instance and, thereafter we would deal with the appeal filed by Hindustan Zinc Limited i.e. Civil Appeal No. 1526 of 2008.

Civil Appeal No. 1494 of 2008

5. The appellant-State and the State Authorities have been aggrieved by the impugned order whereby the additional demand raised under notice dated 24th December, 2001 and subsequent notices issued by the State for recovery of royalty in respect of the lead and zinc extracted by the respondent-company had been quashed by the learned Single Judge of the Rajasthan High Court and the order of the learned Single Judge was confirmed by the Division Bench in the appeal filed before it. After hearing the concerned learned advocates appearing for the State and the respondent-company, the learned Single Judge had come to the conclusion that the impugned notices, whereby additional amount was demanded, were bad in law and therefore, the petition was allowed and the impugned notices dated 22nd December, 2001, 24th December, 2001 and 4th January, 2002 had been quashed. It may

also be stated here that the afore-stated notices had been challenged by the respondent-company initially before the revisional authority under the Mineral Concession Rules, 1960, which had confirmed the validity of the said notices and therefore, the order passed by the revisional authority dated 2nd July, 2003, whereby the validity of the impugned notices had been upheld, was also quashed and set aside.

6. The facts giving rise to the issue in question, in a nutshell, are as under:

7. 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 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.

8. From time to time, 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. In the instant case, we are concerned with two minerals: lead and zinc. 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 as under:

Item No. 22 Lead concentrate	4% of London metal exchange metal price on ad valorem basis Chargeable per tonne of concentrate produced.
Item No. 41 Zinc concentrate	3.5% of London metal exchange metal price on ad valorem basis Chargeable per tonne of concentrate produced.

9. Thereafter, by virtue of another Notification dated 12th September, 2000, substituting the Notification dated 11th April, 1997, royalty in respect of the afore-stated two minerals was payable as under:

Item No. 25 Lead	5% of London metal exchange lead metal price chargeable on the contained lead metal in ore produced.
Item No. 50 Zinc	6.6% of London metal exchange Zinc metal price on ad valorem basis chargeable on contained zinc metal in ore produced.

10. By virtue of the afore-stated Notification dated 12th September, 2000, the manner in which the royalty was to be calculated had been changed.

11. 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.

12. 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.

13. 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.

14. As stated hereinabove, 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.

15. 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.

16. The sum and substance of the submissions made by the learned senior counsel appearing for the appellant was 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.

17. According to the learned counsel, the contention of the respondent, 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.

18. He further submitted that the methodology approved by the High Court would amount to re-writing the provisions with regard to computation and calculation of royalty.

19. He further submitted 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. So as to substantiate his submissions, he 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].

20. On the other hand, the learned senior counsel appearing for the respondent-company vehemently supported the reasons given by the High Court whereby the High Court has held that the respondent-company was not liable to pay royalty on the tailings as they had not been taken out of the leased area. Relying upon the judgment delivered in **National Mineral Development Corporation Limited** v. **State of Madhya Pradesh & Anr.** [(2004) 6 SCC 281], the High Court had further held that as per the provisions of Rule 64C of the Rules, unless dumped tailings or rejects are consumed by the lessee, no royalty can be collected on such tailings or rejects.

21. The learned senior counsel appearing for the respondent-company mainly 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.

22. According to him, 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 can not be included in the contents of the metal produced.

23. Upon hearing the learned counsel at length and upon perusal of the relevant material and the impugned judgment and the

judgments referred to by the learned counsel, we are of the view that the conclusion arrived at by the High Court is correct.

24. It is pertinent to note that Section 9 of the Act enables the appellant-authority to charge royalty on the minerals extracted by the lease holder from the land given on lease for the purpose of mining. The methodology for calculating the amount of royalty is determined by the Rules and by the Notifications issued by the Central Government from time to time.

25. It is also pertinent to note 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.

26. Immediately after the aforestated Notification dated 12th September, 2000 was issued by the Central Government,

provisions of Rule 64 of the Rules had also been amended. By virtue of the said amendment, Rule 64B and Rule 64C had been inserted with effect from 25th September, 2000, which read as follows:

> **"64B. Charging of royalty in case of minerals subjected to processing.-** (1) In case processing of run-of-mine is carried out within the leased area, then, royalty shall be chargeable on the processed mineral removed from the leased area.
>
> (2) In case run-of-mine mineral is removed from the leased area to a processing plant which is located outside the leased area, then, royalty shall be chargeable on the unprocessed run-of-mine mineral and not on the processed product.
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> **64C. Royalty on tailings or rejects –** On removal of tailings or rejects from the leased area for dumping and not for sale or consumption, outside leased area such tailings or rejects shall not be liable for payment of royalty;
>
> Provided that in case so dumped tailings or rejects are used for sale or consumption on any later date after the date of such dumping, then, such tailings or rejects shall be liable for payment of royalty."

27. In the instant case, we are more concerned with the provisions of Rule 64C of the Rules. Upon perusal of the said Rule, it is very clear that unless the tailings or rejects are used for sale or for consumption, such tailings or rejects would not be liable for payment of royalty.

28. Moreover, provisions of Rule 64B of the Rules also make it clear that in case of processing of run-of-mine, royalty shall be charged only on the processed mineral removed from the leased area.

29. The aforestated amendment and Notification dated 12th September, 2000 clearly denote intention of the Government with regard to the calculation of royalty on the contents of metal in the ore produced and not on tailings or rejects, which are not taken out of the leased area. The negligible contents of metal which remains in the mining area by way of tailings, slimes or rejects, which are returned to the mother earth cannot be said to be the part of metal content in the ore produced.

30. This court in the case of **National Mineral Development Corporation Limited** (supra) has clearly observed as under:

> "Dumped tailings or rejects may be liable to payment of royalty if only they are sold or consumed".

31. From the contents of what has been stated hereinabove by this Court, it is very clear that once a portion of the metal is

returned back to the mother earth, it cannot be said to have been extracted or cannot be said to have been taken out of the leased area and when the metal which has not been taken out from the leased area or which is not contained in the ore produced, it cannot be made subject to payment of royalty because the lease holder never took out that portion of the metal from the earth and therefore, that cannot be said to be the part of metal contained in the ore produced.

32. Though the learned counsel for the State referred to the forms in which information with regard to ore received from the mines and treated ore was required to be filled up and supplied to the concerned Government Authorities by the holder of the mining lease, in our opinion the said information and the averments are not much relevant because each and every information required by the Government may not be necessary for the purpose of calculating royalty. Possibly the information received from the holders of the mining lease would be for some other incidental purpose or for the purpose of cross checking the information given by the holder of

the mining lease so as to find out whether the details given by the lease holder on the basis of which royalty is calculated is correct.

33. For the afore-stated reasons, in our opinion, we need not refer to the submissions made in relation to the forms referred to in the Rules.

34. Upon carefully going through the impugned judgment and the judgment delivered by the learned Single Judge of the High Court, we find 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.

35. For the afore-stated reasons, we do not find any substance in the appeal and therefore, the appeal is dismissed with no order as to costs.

CIVIL APPEAL NO. 1526 OF 2008

36. So far as the present appeal is concerned, it has been filed by Hindustan Zinc Limited as it has been aggrieved by the directions whereby the matter has been ordered to be remitted to the mining engineer for re-computing the royalty payable on lead and zinc contained in the ore produced.

37. The appellant-company is aggrieved by the afore-stated direction because it was never prayed by the State that the matter be remitted back to the mining engineer for re-computation of the royalty.

38. The submission on behalf of the appellant-company was to the effect that as the entire concentrate has been taken out of the leased area and as the quantity of concentrate of lead and zinc was very much known, it was not necessary to give such a direction

because there is no question with regard to re-computation of royalty on the basis of metal contained in ore produced.

39. We find substance in what has been submitted because 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.

40. We, therefore, quash the afore-stated direction and the appeal filed by the appellant-company is allowed to the above effect with no order as to costs.

.....J.
(R.M. LODHA)

.....J.
(ANIL R. DAVE)

New Delhi
March 11, 2013