REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2938-2939 OF 2015
(Arising out of S.L.P. (C) Nos.8972-8973 of 2014)

Tata Steel Ltd. ....Appellant

Versus

Union of India & Ors. ...Respondents

AND

CIVIL APPEAL NOS. 2940-2941 OF 2015
(Arising out of S.L.P. (C) Nos.9016-9017 of 2014)

Tata Steel Ltd. ....Appellant

Versus

State of Jharkhand & Ors. ...Respondents

WITH

CIVIL APPEAL NO. 303 OF 2004

Tata Iron & Steel Co. Ltd. ....Appellant

Versus

State of Jharkhand & Ors. ....Respondents

WITH

CIVIL APPEAL NO. 307 OF 2004

State of Bihar (Now Jharkhand) & Ors. ...Appellants

Versus

Tata Iron & Steel Co. Ltd. ...
Respondent

J U D G M E N T

Madan B. Lokur, J.

1. Leave granted.

2. Two sets of appeals are before us. One set of appeals pertains to the Tata Iron and Steel Company Limited (TISCO) and the other set pertains to Tata Steel.

3. In the set of appeals pertaining to TISCO, the first appeal is Civil Appeal No. 303/2004 filed by TISCO against the judgment and order dated 23rd July, 2002 passed by the Jharkhand High Court.[1] The grievance in this appeal is that though the application of the law laid down by this court in

[1] MANU/JH/0590/2002

State of Orissa v. Steel Authority of India Ltd.[2] (hereafter ***SAIL***) has been accepted by the High Court, namely, that royalty is chargeable [in accordance with Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 (the MMDR Act)] on the quantity of coal extracted at the pit-head, yet the refund of excess royalty paid by TISCO for the period from 10th August, 1998 (the date of the decision in ***SAIL***) till June 2002 [about Rs.29.34 cr.] has been denied. TISCO therefore claims entitlement to refund on the excess royalty paid by it for this period.

4. Civil Appeal No.307/2004 has been filed by the State of Bihar (Now Jharkhand) against the same judgment and order dated 23rd July, 2002. The submission is that after the decision in ***SAIL*** the Government of India issued a notification dated 25th September, 2000 inserting Rule 64B and Rule 64C in the Mineral Concession Rules, 1960 (hereafter MCR) and as a result of this, Run-of-Mine (ROM) minerals, after being processed in the leased area are exigible to royalty on the processed

[2] (1998) 6 SCC 476

mineral. It is contended that these rules were, unfortunately, not brought to the notice of the High Court and that the decision rendered by

the High Court accepting the law laid down in ***SAIL*** is incorrect.

5. In this context, it must immediately be noted that the contention of the State of Jharkhand is not that Rule 64B and Rule 64C of the MCR have retrospective effect. That being so, the question is whether TISCO is entitled to refund of the excess royalty paid from 10th August, 1998 (the date of the decision in ***SAIL***) to 25th September, 2000 and if so whether the High Court was right in denying that refund. Also, the question is whether TISCO is entitled to refund of royalty from 25th September, 2000 till June 2002 and if so, whether the High Court was right in denying that refund.

6. The other set of appeals pertaining to Tata Steel consists of four appeals. These appeals filed by Tata Steel arise out of S.L.P. (C) Nos.8972-73/2014 and S.L.P. (C) Nos.9016-17/2014

and are directed against a common judgment and order dated 12th March, 2014 passed by the Jharkhand High Court in W.P. (C) Nos.1504/2009 & 1505/2009 and W.P. (C) Nos. 2995/2008 & 2999/2008.[3] The grievance of Tata Steel is that despite the decision of this court in ***SAIL*** and the decision dated 23rd July, 2002 of the Jharkhand High Court, royalty is being charged from Tata Steel on processed or beneficiated coal and not on extracted coal or Run-of-Mine (ROM) coal at the pit-head. It is submitted that this is despite the affidavit of the Ministry of Coal of the Government of India that Rule 64B and Rule 64C of the MCR "may not be particularly applicable on coal minerals." Tata Steel is also aggrieved by the conclusion of the Jharkhand High Court that Rule 64B and Rule 64C of the MCR are constitutionally valid.

Appeals filed by Tata Steel

7. The question for our consideration in the set of appeals filed by Tata Steel is whether royalty is chargeable under Section 9 of the Mines and Minerals (Development and

[3] 2014 (2) JLJR 702

Regulation) Act, 1957 and the Second Schedule thereto on raw or unprocessed or Run-of-Mine (ROM) coal at the pit-head or is it chargeable on coal after it is processed and beneficiated in the washeries located within the boundaries of the leased area. In our opinion, the question of payment of royalty has arisen in respect of other minerals and this has been discussed in cases relating to those minerals. On an appreciation of the decisions rendered, it must be held that royalty is payable on the processed or beneficiated coal only after 25th September, 2000 and royalty is payable on unprocessed, raw or ROM coal extracted at the pit-head only for the period from 10th August, 1998 to 25th September, 2000.

Background facts

8. Tata Steel holds several mining leases for coal in the State of Jharkhand, in the district of Ramgarh (formerly Hazaribagh) known as the West Bokaro Colliery and in the district of Dhanbad known as the Jamadoba and Belatand group of collieries. The coal mines are captive coal mines. Tata Steel has an adequate number of washeries in the leased area where the

raw coal extracted from the mine (Run-of-Mine coal) is washed to improve its quality and is then dispatched for use in its steel plant at Jamshedpur for the production of iron and steel.

9. Initially Tata Steel and TISCO were of the opinion that in accordance with the provisions of Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957 [now renamed as the Mines and Minerals (Development and Regulation) Act, 1957 or the MMDR Act][4] they were liable to pay royalty at the rates mentioned in the Second Schedule to the MMDR Act on the tonnage of washed coal, that is after raw coal

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[4] With effect from 18th December, 1999

9. Royalties in respect of mining leases.—(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2-A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.

(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years.

or Run-of-Mine (ROM) coal is removed from the washery post the beneficiation process. In fact a writ petition was filed by TISCO in the Patna High Court being CWJC No.1 of 1984 (R) seeking a declaration to this effect. The State of Bihar (at that time) was of the view that royalty was payable at the rate mentioned in the Second Schedule to the MMDR Act on the tonnage of the extracted coal at the pit-head and not on the tonnage of the washed or beneficiated coal. By its judgment and order dated 7th August, 1990 the Patna High Court held that TISCO was liable to pay royalty on the tonnage of the washed or beneficiated coal. It was held:

> "From the plain reading of section 9(2) of the Act, it is clear that royalty is payable on the coal removed from the leased area and so long it is not removed, no royalty is payable. In view of the fact that coal is removed from the leased area, only after it is washed, the petitioner is liable to pay royalty on the weightage of that coal."

10. This decision has attained finality and the position at law in this regard continued till 1998.

11. On 10th August, 1998 this court delivered judgment in ***SAIL***. The question raised in that case was whether the Steel Authority of India Ltd. or SAIL was liable to pay royalty at the

rate mentioned in the Second Schedule to the MMDR Act on the quantity of mineral (limestone and dolomite) extracted as it is or on the quantity arrived at after these minerals have undergone a process of removal of waste and foreign matter. According to the State of Orissa royalty was chargeable on the extracted minerals at the rate mentioned in the Second Schedule to the MMDR Act while according to SAIL royalty was chargeable at the rate mentioned in the Second Schedule to the MMDR Act on the quantity of minerals obtained after the process of removal of waste and foreign matter.

12. This court referred to an earlier decision of the Orissa High Court relating to the National Coal Development Corporation Ltd.[5] In that case, the High Court held that removal of coal from the seam in the mine and extracting it through the pit's mouth to the surface would satisfy the requirement of Section 9 of the MMDR Act to give rise to a liability for royalty. The decision of the Orissa High Court was appealed against but the appeal was dismissed by this court.[6] Relying upon this

[5] National Coal Development Corporation Ltd. v. State of Orissa, AIR 1976 Orissa 159
[6] National Coal Development Corporation Ltd. v. State of Orissa, (1998) 6 SCC 480

decision, it was concluded in ***SAIL*** that the process of removal of waste and foreign matter amounts to consumption and, therefore, the entire mineral extracted is exigible to a levy of royalty. By necessary implication the decision of the Patna High Court in CWJC No.1 of 1984 (R) filed by TISCO stood reversed.

13. Perhaps as a consequence of the decision in ***SAIL***, Rule 64B and Rule 64C were inserted in the MCR by a notification dated 25th September, 2000.[7]

14. Be that as it may, in view of the decision in ***SAIL***, the stand taken by Tata Steel/TISCO completely changed and the view now sought to be canvassed was that royalty is payable at the rate mentioned in the Second Schedule to the MMDR Act on the tonnage of unprocessed or ROM coal at the pit-head and not on processed or beneficiated coal.

15. With regard to the claim of Tata Steel that it was liable to pay royalty only on the tonnage of unprocessed or ROM coal at the pit-head in terms of the decision in ***SAIL***, the response of

[7] National Mineral Development Corporation Ltd. v. State of M.P., (2004) 6 SCC 281 paragraph 32 had earlier echoed this view

the State of Jharkhand was that in view of Rule 64B and Rule 64C of the MCR, royalty was liable to be paid at the rate mentioned in the Second Schedule to the MMDR Act on the tonnage of beneficiated coal and not on the tonnage of the raw, extracted or ROM coal at the pit-head. In other words, not only was there a *volte face* by Tata Steel/TISCO but also by the State Government. The High Court has observed in the impugned judgment dated 12th March, 2014 that the reason for the *volte face* both by Tata Steel and by the State of Jharkhand was that by the notifications dated 1st August, 1991 and 14th October, 1994 the rate of royalty on the washed or beneficiated coal was increased.[8]

16. In any event, this interpretational dispute led to the filing of a set of writ petitions by Tata Steel in the High Court of Jharkhand, out of which the present appeals have arisen.

The controversy

[8] By a notification dated 5th May, 1987 the rate of royalty on coking coal Steel Grade I was fixed at Rs.7/- per ton and of Washery Grade IV at Rs.5.50 per ton; by a notification dated 1st August, 1991 the rate of royalty on coking coal Steel Grade I was increased to Rs.150/- per ton and of coking coal Washery Grade IV to Rs.75/- per ton; by a notification dated 14th October, 1994 the rate of royalty on coking coal Steel Grade I was further increased to Rs.195/- per ton and of coking coal Washery Grade IV to Rs.95/- per ton.

Quality of coal and stage of chargeability

17. When coal is extracted from a mine, it is referred to as raw coal or unprocessed coal. Depending upon the use to which it may be put, which also depends upon its ash content and its calorific value, raw coal or unprocessed coal or Run-of-Mine (ROM) coal can be used as it is.

18. As far as Tata Steel is concerned, it is stated on page 164 of the Convenience Volume handed over to us by learned counsel for Tata Steel that "Most of our raw coal falls in the (on average) Washery Grade IV." It may be mentioned that coal of Washery Grade IV has ash content between 28% and 35%. In the synopsis and lists of dates filed by Tata Steel in the appeals arising out of S.L.P. (C) Nos. 8972-73 of 2014 it is stated as follows:

> "The coal, when extracted in its raw form also known as ROM contains high percentage of ash. Though ROM is fit for many purposes, it is not fit for the steel industry."

19. Even the Union of India in its affidavit filed by the Under Secretary in the Ministry of Coal in W.P. (C) No.1504 of 2009 in

the Jharkhand High Court states to the same effect, namely, that ROM coal can be used as it is. It is stated in paragraph 11 thereof as follows:

> "Considering the fact that in case of coal, where the entire ROM can be generally made usable, the Respondents No. 1 & 2 are of the opinion that rule 64B and the rule 64C [of the Mineral Concession Rules, 1960] may not be particularly applicable on coal minerals."

20. Similarly, the State of Jharkhand in its affidavit filed in the same case has stated in paragraph 79 as follows:

> "That with regard to the averments made by the petitioner in Paragraphs 84 and 85 of the instant writ application it is stated and submitted that it is not necessary that coal produced from a mine should always be subjected to processing. There are various coal mines in the country producing raw coal without any processing……."

21. Therefore, while raw coal or unprocessed coal or ROM coal extracted by Tata Steel being Washery Grade IV having ash content between 28% and 35% can be used as it is for certain purposes, it requires to undergo a process of beneficiation to make it suitable for use in steel making. This process is undertaken by Tata Steel in its washeries in the leased areas.

22. The controversy in the present appeals is, therefore, limited to the question whether royalty is payable at the rate

mentioned in the Second Schedule to the MMDR Act on processed coal, that is, coal consumed or removed from the boundaries of the leased area in a beneficiated form or on the raw or unprocessed or ROM coal at the pit-head.

23. That the controversy is limited to the stage at which royalty is chargeable on coal is also clear from paragraph 17 of W.P.(C) No.2999 of 2008 filed by Tata Steel in the High Court wherein it is stated (though ROM coal can be used as it is) as follows:-

> "17. That the petitioner all along has been utilizing the entire coal raised from the said West Bokaro Colliery for the purpose of treatment and/or washing thereof as to reduce the ash percentage thereof with a view to use the same in its Steel Plant, in as much as in the Steel plant only coking coal of high grade which containing [contains] less ash can be used."

24. Similarly, in paragraph 31 of the counter affidavit filed by the Union of India in W.P.(C) No.1504 of 2009 in the High Court it is stated as follows:-

> "31. That in reply to the statements made in para No.84 of the Writ Petition the Answering Respondent most humbly and respectfully state that the applicability of Rule 64B and Rule 64C [of the Mineral Concession Rules, 1960] is necessary for minerals that need processing or beneficiation before being used, especially metallic minerals. However, [as far as] its applicability to coal minerals is concerned considering the fact that in case of coal, where the entire ROM can be generally

> made usable the Respondent No. 1 & 2 are of the opinion that Rule 64B and Rule 64C may not be particularly applicable to coal mineral."

25. It is quite clear from the above that raw or unprocessed or ROM coal at the pit-head can be used for certain purposes; it is also clear that as far as Tata Steel is concerned, Washery Grade IV coal that it extracts needs to be beneficiated to make it usable in the steel industry and the controversy is limited to the issue of payment of royalty - whether it is payable on raw or unprocessed or ROM coal at the pit-head or it is payable on processed Steel Grade coal.

Coal beneficiation

26. The question that, therefore, arises is what is the consequence of beneficiation? Very briefly, the consequence of beneficiation of coal is upgrading or improving its quality from the ROM coal. In the Convenience Volume handed over to us, with reference to beneficiation of coal, it is stated by Tata Steel as follows:[9]

> "The crushed raw coal (ROM) has ash percentage varying from 22% to 40% and moisture of 3% to 5%. For use in Blast

[9] This has not been disputed by the State of Jharkhand

furnace for steel making, we require clean coal of uniform quality at low ash %. So, Beneficiation of ROM raw coal is done to reduce the ash content to bring up to Steel Grade coal.

ROM coal of various seams at coal mine is fed in to the Coal washery (Beneficiation plant) for beneficiation so that the final clean coal product has ash of below 15% (Steel Grade coal).

For coal beneficiation, gravity separation methods for coarser (size 13 mm to 0.5 mm) material and froth floatation method for finer material (size < 0.5 mm) are done.

So, before beneficiation, the raw coal is crushed in to size below 13 mm at Coal Handling Plant (Crushing Plant). The coarse material i.e. size from 13 mm to 0.5 mm is treated in dense media cyclone whereas, less than 0.5 mm is treated by froth floatation method. As beneficiation is a wet process hence, it increases the moisture percentage of beneficiated coal by around 8% to 15%.

After beneficiation, apart from the clean coal (required in Blast furnace for Steel making), we also get Coal by-products named as, middling (ash 40-45%), Tailings (ash 40-45%) and Rejects (ash 60-65%).

The product quantity after beneficiation process gets increased due to wet process by adding moisture into the output, shown by an example below –

Production (Extraction): The basis figure of production of 100 tonnes of ROM coal has been taken.
Therefore, Quantity produced (extracted): = 100 tonnes

Beneficiation: The products are dewatered but still the surface moisture gets adhered to the product generated. The beneficiation is a wet process i.e. raw coal mass flows through different process in slurry form. Output is measured on wet process because it is transported on wet basis (with moisture). Hence the output is more than the input of raw coal.

Beneficiation process results in

Clean Coal;
Middlings;
Tailings; and
Rejects

Thus 100 tonnes of raw coal will produce approximately 115 tonnes of washed product.

Output from collieries (Average Quantities):

Clean coal	= 40 tonnes
Middlings	= 40 tonnes
Tailings	= 25 tonnes
Rejects	= 10 tonnes

Conclusion:

It is quite clear that beneficiation process (dense media gravity separation and froth floatation) are a physical separation process to separate higher ash coal and lower ash coal, so no chemical changes are there in the coal mineral, as there are no chemical reactions involved during this beneficiation process.

Referring below a flow chart [not relevant]…….. From the quantity related table, it is also quite evident that due to addition of water during wet beneficiation, the summation of beneficiated coal product quantity is higher than fed ROM coal quantity."

27. From this, it is quite clear that the beneficiation process, as far as coal is concerned, has two significant consequences – the grade of coal improves (from Washery Grade IV it could improve to Steel Grade I) and the weight of the coal increases (from 100 tons of raw ROM coal to 105 tons [excluding rejects] of beneficiated coal).

28. However, the process of beneficiation for other minerals does not result in the same consequence. As mentioned by the Union of India in paragraph 9 of its counter affidavit filed in W.P. (C) No. 1504 of 2009 in the High Court, the beneficiation of copper has different consequences. It is stated, in this regard as follows:

> "It is stated that the mineral extracted during mining in its primary state is called run of mine (ROM), which may or may not be useable in its primary state depending on the minerals and its grade. In such a case where the entire ROM cannot be used generally, there is a level of processing required to beneficiate the ROM to enhance the grade ore and also take out waste material occurring with the ore. Rule 64B is specifically applicable in such class of minerals where only a part of the entire ROM mineral extracted through mining can be used. For example, in the case of copper ore, in which the metal contained in ore is in the range of 1% to 2% of the ROM the ROM is converted into a high as 25%, before it is sent out the lease area for refining and smelting. In such cases, the rule 64B of MCR provides for royalty to be charged by the State Government on the higher grade of ore that is being taken out of the lease area, in terms of the royalty rate prescribed in Second Schedule to the MMDR Act. Rule 64B of MCR does not specify the royalty rates and its applicability is only to the extent of facilitating levy or royalty on the processed ore removed from the lease area, and not the mineral consumed in the lease area. Further royalty is required to be paid as per the rates notified by the Central Government in Second Schedule to the MMDR Act. Rule 64B of MCR is therefore applicable in case of such minerals which cannot be used without processing.
>
> Similarly, rule 64B [rule 64C] of the MCR is applicable on removal of tailings or rejects from leased area for dumping and restricts levy on royalty on tailings or rejects. However,

> levy of royalty is applicable only in case such tailings or rejects subsequently used for sale or consumption. For example, tailing from copper concentrate are likely to contain silver.
>
> However, royalty on silver generally cannot be levied till silver is extracted from the tailings and sold or consumed. Rule 64C is therefore applicable on such cases of minerals, where tailings or rejects generated during mining or processing are likely to be dumped due to its limited use."

29. In other words, the ROM copper ore contains hardly 1% or 2% of copper but after the beneficiation process the copper extract from the ore increases to about 25%. It is thereafter sent for refining and smelting. In other words, copper ore cannot be utilized as it is or in the ROM state – it must undergo a beneficiation process from the ore and can then be used.

30. As mentioned in ***SAIL*** the consequences of processing dolomite or limestone has a consequence different from that of copper ore, namely, mere removal of waste and foreign matter. It appears that this process does not improve the quality of the dolomite or the limestone, though with the removal of waste and foreign matter, the weight would decrease somewhat. It may be mentioned that royalty is charged on dolomite and limestone on a tonnage basis.

31. It is in this context that the nature of the mineral and the stage at which royalty is to be computed become important. The basis of levy would have to be rational and it might have different consequences at different stages.

Computation of royalty

32. As far as the computation of royalty on coal is concerned, Tata Steel has given details of the methodology of computation in the Convenience Volume handed over to us.[10] For the purposes of computing the royalty amount, the quantities assumed by Tata Steel are given below.

33. It is said that 100 tons of raw coal post-beneficiation will produce approximately 115 tons of the washed products. The break-up of this is as follows:

Clean coal	= 40 tons
Middlings	= 40 tons
Tailings	= 25 tons
Rejects	= 10 tons

34. The computations made by Tata Steel are on the basis of the above assumptions. The rate of royalty is given in the Notification dated 14th October, 1994 amending the Second

[10] This has not been disputed by the State of Jharkhand.

Schedule to the MMDR Act. For coking coal Steel Grade I, coking coal Steel Grade II and coking coal Washery Grade II the rate of

royalty is Rs.195/- per ton. For coking coal Washery Grade IV the rate of royalty is Rs.95/- per ton.

35. Therefore, for every 100 tons of coking coal Washery Grade IV extracted by Tata Steel, the royalty payable on ROM coal was Rs.9500/- with effect from 14th October, 1994. However, if the royalty were to be computed on post-beneficiation coal, the royalty payable by Tata Steel would work out to:

Product	**Grade**	**Quantity (tons)**	**Royalty rate (Rs/ton)**	**Amount (in Rs)**
Clean coal	Steel Grade I	40	195	7800
Middlings	Grade E	40	70	2800
Tailings	Grade D	25	70	1750
Royalty payable		**105**		**12350**
Since rejects were ungraded and no rate was prescribed, no royalty was payable on rejects.				

36. Based on the above computation, the difference in royalty on post-beneficiation coal (as claimed by the State of

Jharkhand) and on ROM coal (as claimed by Tata Steel) is Rs.2850/- per 100 tons of coal extracted (12350 minus 9500 = 2850).

37. This position continued till August 2002 when the Second Schedule to the MMDR Act was amended by a notification dated 16th August, 2002.

38. In terms of the notification dated 16th August, 2002 the rate of royalty for coking coal Steel Grade I, coking coal Steel Grade II and coking coal Washery Grade II was raised to Rs.250/- per ton. For coking coal Washery Grade IV the rate of royalty was raised to Rs.115/- per ton.

39. Therefore, for every 100 tons of coking coal Washery Grade IV extracted by Tata Steel, the royalty payable on ROM coal was Rs.11500/- with effect from 16th August, 2002. However, if the royalty were to be computed on post-beneficiation coal, the royalty payable by Tata Steel would work out to:

Product	**Grade**	**Quantity (tons)**	**Royalty rate (Rs/ton)**	**Amount (in Rs)**

Clean coal	Steel Grade I	40	250	10000
Middlings	Grade E	40	85	3400
Tailings	Grade D	25	85	2125
Royalty payable		**105**		**15525**
Rejects have not been included in this calculation.				

40. Based on the above computation, the difference in royalty on post-beneficiation coal (as claimed by the State of Jharkhand) and on ROM coal (as claimed by Tata Steel) is Rs.4025/- per 100 tons of coal extracted (15525 minus 11500 = 4025).

41. This position continued till August 2007 when the Second Schedule to the MMDR Act was amended by a notification dated 1st August, 2007. Through this notification the rate of royalty on coal became a combination of a specific rate and an *ad valorem* rate, the formula for calculation being R = a + bP where 'R' is the royalty in Rs. per ton, 'a' is a fixed component, 'b' is a variable or *ad valorem* component and 'P' is the basic pit-head price of ROM coal.

42. The notification provides that for computing royalty (R) on Steel Grade I coal, a = Rs.180; b = 5% of 'P'; P = basic pit-head

price of ROM coal as reflected in the invoice. Similarly, for payment of royalty (R) on Washery Grade IV coal, a = Rs.90; b = 5% of 'P'; P = basic pit-head price of ROM coal as reflected in the invoice.

43. Tata Steel gives the computation arrived at on the basis of the above notification in the Convenience Volume as follows:

> "As Tata Steel is not selling ROM, hence we take the prices notified by CIL [Coal India Limited] for its various collieries. For example, we apply the prices notified by Coal India Ltd for Central Coalfields Ltd. In the Price Notification No.181 dated 15.10.2009 for CCL, the basic price for ROM Washery Grade IV is Rs.1120.[11]

Product	**Grade**	**Quantity (in tons)**	**Royalty rate (a+bP)**	**Royalty (Rs. per ton**	**Amount (in Rs)**
Clean coal	Steel Grade I	40	180+5% of 1120	236	9440
Middlings	Grade E	40	70+5% of 790	116	4400
Tailings	Grade D	25	70+5% of 1000	120	3000
Royalty payable		**105**			**16840**
Rejects have not been included in this calculation.					

If we were to pay on RoM:

[11] Since Tata Steel is not selling ROM coal, the price notified by the Coal India Ltd. for its various collieries has been taken by Tata Steel as the basic price for ROM Washery Grade IV as Rs.1120/-. In terms of the communication dated 16th October, 2009 issued by the Central Coalfields Limited, Sales & Marketing Division, Darbhanga House, Ranchi with reference to Price Notification No.1181 dated 15th October, 2009 the pit-head/basic price of Run of Mine (ROM) coal for Washery Grade IV stood revised from 1020 (in Rupees per tonne) to 1120. This is the figure taken by Tata Steel in its computations given in the Convenience Volume.

Washery Grade IV: 90+5% of 1120 (56) (Rs.146 per ton) = **Rs.14600/-**"

44. Based on the above computation, the difference in royalty payable on post-beneficiation coal (as claimed by the State of Jharkhand) and on ROM coal (as claimed by Tata Steel) is Rs.2240/- per 100 tons of coal extracted (16840 minus 14600 = 2240).

45. We have been given to understand that this position has undergone changes, but we are not concerned with them.

46. To summarize the computations, the royalty as computed by the State and as computed by Tata Steel is as follows:

Royalty payable in Rs.	**Period (from date)**	**On beneficiated coal (per 100 tons)**	**On ROM coal (per 100 tons)**	**Difference (per 100 tons)**
Royalty payable	14.10.1994	12350	9500	2850
Royalty payable	16.8.2002	15525	11500	4025
Royalty payable	1.8.2007	16840	14600	2240

47. As is quite obvious, the difference in royalty payable would run into huge figures particularly since coal is mined in millions of tons.

Discussion

48. Two interpretations have been given to removal of a mineral from the leased area as postulated in Sections 9(1) and 9(2) of the MMDR Act.

49. The first is a literal meaning given by the Patna High Court in its judgment and order dated 7th August, 1990. The High Court gave a literal interpretation to Section 9(2) of the MMDR Act and effectively interpreted the removal of a mineral from the leased area as removal from the boundaries of the leased area. On this basis, it was concluded that since beneficiated coal is removed from the leased area, Tata Steel is liable to pay royalty on the weight of the beneficiated coal.

50. The second interpretation is a somewhat restrictive interpretation given by the Orissa High Court in ***National Coal Development Corporation Limited***. In that case, it was held that:

> "The incidence of royalty under the general tenor of the scheme [of Section 9 of the MMDR Act] arises when coal is severed from the seam in its natural state within the mine and removed outside. Removal [of coal] from the seam in the mine and extracting the same through the pit's mouth to the surface satisfies the requirement of Section 9 [of the MMDR Act] in order to give rise to liability for royalty."

51. In other words, the Orissa High Court did not accept the literal meaning of removal from the leased area occurring in Section 9 of the MMDR Act as removal from the boundaries of the leased area but gave a restricted interpretation to removal from the leased area as extraction of the coal from the seam in the mine which is in the leased area, that is, extraction from the pit-head. This restricted interpretation was accepted by this court in the appeal filed by National Coal Development Corporation and on that basis this court also upheld the payment of royalty by the lease holder on coal consumed by the workmen of the Corporation prior to the amendment of Section 9 of the MMDR Act in 1972.[12]

52. Both the interpretations mentioned above relating to removal from the leased area, literal and restricted, were given in the context of extraction of coal.

53. The controversy regarding the interpretation of removal of a mineral (not coal) from the leased area again came up for consideration in a petition filed by SAIL in the Orissa High

[12] National Coal Development Corporation Ltd. v. State of Orissa, (1998) 6 SCC 480

Court. This petition concerned itself with the payment of royalty on dolomite and limestone. While referring to Section 9(1) of the MMDR Act and the lease deed of SAIL, the Orissa High Court held as follows:-

> "A distinction has to be made between removal from the mine and removal from the leased area. If after the mineral is extracted from the mine, it undergoes some processing and during processing, a part of the mineral is wasted and the wastage remains on the leased area and is not removed therefrom, the lessee cannot be asked to pay royalty on that portion of the wastage."[13]

54. In other words, the Orissa High Court took the literal interpretation given to removal from the leased area as removal from the boundaries of the leased area, virtually reiterating the literal interpretation given by the Patna High Court in its judgment and order dated 7th August, 1990.

55. This court in the appeal filed by SAIL did not get into the question of removal of the mineral from the boundaries of the leased area but noted that the extracted mineral undergoes a process of removal of waste and foreign matter before it is removed from the boundaries of the leased area. The decision of this court on the levy of royalty turned on the consumption

[13] The decision of the Orissa High Court does not appear to have been reported.

of the mineral through that process carried out by the holder of the mining lease. In that context it was held in ***SAIL*** that since the process of removal of waste and foreign matter amounts to consumption, the entire extracted mineral is exigible to royalty. It was held:-

> "Section 9(1) of the Act also contemplates the levy of royalty on the mineral consumed by the holder of a mining lease in the leased area. If that be so, the case of the appellants that such processing amounts to consumption and, therefore, the entire mineral is exigible to levy of royalty has to be accepted."

56. It is quite clear that ***SAIL*** did not consider (and then reject) the reasoning given by the Orissa High Court that royalty is not payable on wastage that remains within the boundaries of the leased area. This was critically adverted to in an order dated 25th July, 2006 in C.A. No.5651 of 2005[14] on the ground, *inter alia*, that the distinction made by the Orissa High Court between removal of a mineral from a mine and removal from a leased area has been rejected without any reason. This is what this court had to say:

[14] M/s Central Coalfields Ltd. v. State of Jharkhand decided by this court

> "A bare reading of this Court's judgment in Steel Authority of India's case (supra) indicates that there is practically no reason indicated as to why the distinction made by the High Court was found to be unacceptable. As was noticed by the High Court in the impugned judgment in the said case the distinction is certainly of relevance. As we are unable to subscribe to the view expressed in Steel Authority of India's case (supra), we refer the matter to a larger Bench. Records may be placed before Hon'ble the Chief Justice of India for necessary directions."

57. We may also mention at this stage that ***SAIL*** has been politely distinguished in ***National Mineral Development Corporation Ltd. v. State of M.P.*** (or ***NMDC***).[15]

58. In sum and substance this is the issue before us, namely, whether for the purposes of payment of royalty, removal of a mineral as mentioned in Section 9 of the MMDR Act must be restrictively interpreted as removal or extraction of the mineral from the mine or the pit-head or a literal interpretation as removal of the mineral from the boundaries of the leased area.

59. In ***NMDC*** the question before this court was whether "slimes" are exigible to royalty, as forming part and parcel of iron ore.

60. The Second Schedule to the MMDR Act provides rates of royalty and Entry 23 relates to iron ore. Royalty is payable on

[15] (2004) 6 SCC 281

lumps, fines and concentrates. In the process of mining, iron ore is extracted and separated into ore lumps, fines and waste material which is commonly known as "slime", that is the resultant waste material from the wet screening process undertaken for segregation of lumps and fines. When the issue of exigibility of "slimes" was raised in the High Court,[16] it was held that royalty is payable on the mineral as extracted and removed or consumed from the leased area. The High Court also relied upon ***SAIL*** to hold that the entire quantity of ROM iron ore as extracted from the earth shall be liable to payment of royalty.

61. While disagreeing with the view taken by the High Court, it was held by this court that if Section 9 of the MMDR Act was to be read in isolation, perhaps, the total quantity of mineral removed from the leased area or consumed in the process of beneficiating iron ore would have been liable for payment of royalty and that quantity may have included the quantity of slimes as held in ***SAIL***. But, this court went on to hold that

[16] The decision of the High Court is reported as AIR 1999 MP 112

Section 9 of the MMDR Act cannot be read in isolation and the Second Schedule to the MMDR Act must be read as a part and parcel of Section 9 of the said Act. It was also held that though the Parliament was fully aware that iron ore would have to undergo a process which would lead to the emergence of lumps, fines, concentrates and slimes yet it chose to leave slimes out of consideration for the payment of royalty. For this reason, it was held that royalty was not payable on slimes.

62. This court also proceeded to consider Rule 64B and Rule 64C of the MCR and held that in the case of iron ore the levy of royalty is postponed until the beneficiation process has been undertaken and it is only then that royalty is capable of being quantified on the quantity of lumps, fines and concentrates.

63. The decision of this court in ***SAIL*** was also distinguished by holding that the removal of waste and foreign matter in the processing of dolomite and limestone did not result in any removal from the leased area but that the run-of-mine was itself consumed in the processing in the leased area, thereby

making a distinction between removal from the leased area and consumption within the leased area.

64. ***NMDC*** has analyzed the scope of Section 9 of the MMDR Act in conjunction with the Second Schedule to the MMDR Act. It was held that there is no conflict between the two and that Section 9 of the MMDR Act cannot be read in isolation but that the Second Schedule to the MMDR Act must be read as a part and parcel of Section 9 of the MMDR Act. Paragraphs 23 and 24 of the Report are significant and they read as follows:

> "23. Section 9 is not the beginning and end of the levy of royalty. The royalty has to be quantified for purpose of levy and that cannot be done unless the provisions of the Second Schedule are taken into consideration. For the purpose of levying any charge, not only has the charge to be authorised by law, it has also to be computed. The charging provision and the computation provision may be found at one place or at two different places depending on the draftsman's art of drafting and methodology employed. In the latter case, the charging provision and the computation provision, though placed in two parts of the enactment, shall have to be read together as constituting one integrated provision. The charging provision and the computation provision do differ qualitatively. In case of conflict, the computation provision shall give way to the charging provision. In case of doubt or ambiguity the computing provision shall be so interpreted as to act in aid of charging provision. If the two can be read together homogeneously then both shall be given effect to, more so, when it is clear from the computation provision that it is meant to supplement the charging provision and is, on its own, a substantive provision in the sense that but for the computation provision the charging provision alone would not

> work. The computing provision cannot be treated as mere surplusage or of no significance; what necessarily flows therefrom shall also have to be given effect to.
>
> 24. Applying the abovestated principle, it is clear that Section 9 neither prescribes the rate of royalty nor does it lay down how the royalty shall be computed. The rate of royalty and its computation methodology are to be found in the Second Schedule and therefore the reading of Section 9 which authorises charging of royalty cannot be complete unless what is specified in the Second Schedule is also read as part and parcel of Section 9."

65. It is clear therefore that Section 9 of the MMDR Act has to be read and understood in conjunction with the Second Schedule to the MMDR Act. There is a good reason for it, which is that the scheme of the levy of royalty cannot be straitjacketed in view of the variety of minerals to which the MMDR Act applies and for the extraction of which royalty has to be paid.

66. In the case of coal, it has been noted that "Though ROM [coal] is fit for many purposes, it is not fit for the steel industry"; "in case of coal ... the entire ROM can be generally made usable" and "it is not necessary that coal produced from a mine should always be subjected to processing. There are various coal mines in the country producing raw coal without

any processing……." This is to say that ROM coal can generally be used in the raw form without processing and beneficiation is not at all necessary. However, if the raw coal is to be utilized for some specialized purposes it would need beneficiation.

67. On the other hand, in the case of dolomite or limestone (subject matter of ***SAIL***) the process described in paragraph 4 of the Report is undertaken not to upgrade or improve the quality of the mineral but to remove waste and foreign matter. It is not clear whether dolomite or limestone can be utilized as it is or in the ROM state without removal of waste and foreign matter. That question was adverted to by the Orissa High Court but not considered by this court, hence the critical reference. As mentioned above, the decision in ***SAIL*** was based not on removal but on consumption of the mineral.[17] On the basis of

[17] In ***National Mineral Development Corpn. Ltd. v. State of M.P.*** this court observed in paragraph 34 of the Report as follows:

> "Both these minerals [dolomite and limestone] were utilised as raw material by the mining lessees on the leased area itself. The mining lessee claimed that dolomite and limestone having been extracted from the mine underwent processing wherein a part of the mineral was wasted and the wastage remained on the leased area and not removed therefrom. The contention of the lessee was that royalty could not be demanded on that portion of the wastage which was *not removed* from the mining area. This contention was repelled by this Court by reference to Section 9(1) of the Act which speaks of payment of royalty in respect of any mineral *removed or consumed* by the lessee. The Court held that though the impurities part of dolomite and limestone were not removed from the leased area but that would not make any difference as the run-of-mine was itself consumed in the processing on the leased

the mineral extracted and the decision rendered by this court, therefore, no similarity can be found between ***SAIL*** (case of consumption) and ***National Coal Development Corporation Limited*** (case of removal) although royalty is charged on dolomite and limestone, as in coal, on a per ton basis.

68. Iron ore (with which ***NMDC*** is concerned) falls in the same generic category for levy of royalty as dolomite, limestone and coal namely on a tonnage basis but there is a crucial difference between iron ore and coal (as also between dolomite, limestone and iron ore). In the case of iron ore, beneficiation is necessary before it can be utilized. It has been observed in ***NMDC*** that "in iron ore production the run-of-mine (ROM) is in a very crude form. A lot of waste material called "impurities" accompanies the iron ore. The ore has to be upgraded. Upgrading the ores is called "beneficiation". That saves the cost of transportation. Different processes have been developed by science and technology and accepted and adopted in different iron ore

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area."

projects for the purpose of beneficiation."[18] It is for this reason, *inter alia*, that the levy of royalty on iron ore is postponed, as held in ***NMDC***, to a post-beneficiation stage.

69. In the case of coal, beneficiation is not necessary since ROM coal can be used as it is straight from the pit-head. In the case of iron ore, as noticed in ***NMDC***, waste material is removed from the extracted iron ore and through the beneficiation process the ore is upgraded. The removal of waste material obviously reduces the weight of the iron ore and that is why it saves the cost of transportation as observed in ***NMDC***. However, in the case of coal apart from the fact that beneficiation is not necessary, if the lease holder does in fact beneficiate the coal, the weight of the beneficiated coal is more than the ROM coal as has been noted above. This would, therefore, increase the cost of transportation which is based on the weight of the coal. Under the circumstances, removal of beneficiated coal as against ROM coal might work to the disadvantage of the lease holder. For this reason, no similarity

[18] National Mineral Development Corporation Ltd v. State of M.P. paragraph 28.

can be found between coal and iron ore or between coal and dolomite and limestone (apart from the fact that ***SAIL*** did not deal with removal from the leased area but consumption within the leased area).

70. There are therefore, three categories of minerals dealt with by this court – coal that can be utilized in the raw or ROM stage straight from the pit-head, iron ore that cannot be utilized in the raw or ROM stage and needs beneficiation and dolomite and limestone about which it is not clear whether it can be utilized in the raw or ROM stage.

71. On the other hand, there are other minerals such as copper, gold, lead, zinc and several others where the rate and computation of royalty payable are arrived on a completely different basis. The table below of some sample minerals taken from the Second Schedule to the MMDR Act illustrates this position[19] and it also illustrates that waste or foreign matter in respect of these minerals is much more than someone not in the business of extraction of minerals could imagine:

[19] This has undergone further changes. These figures have been taken since they pertain to the period when the dispute arose in the cases referred to.

Entry	Mineral	Rate as per Notification of 5th May, 1987	Rate as per Notification of 17th February, 1992
7	Cadmium	Sixteen rupees per unit percent of cadmium metal per ton of ore and on pro rata basis	Seventy four rupees per unit percent of cadmium metal per ton of ore and on pro rata basis
12	Copper ore	Five rupees per unit percent of copper metal contained per ton of ore and on pro rata basis	Seventeen rupees per unit percent of copper metal contained per ton of ore and on pro rata basis
21	Gold	Two rupees per one gram of contained gold per ton of ore and on pro rata basis	(a) Eleven rupees per one gram of contained gold per ton of ore and on pro rata basis (b) by product gold ten rupees per gram
27	Lead ore	Three rupees per unit percent of contained lead metal per ton of ore and on pro rata basis	Eight rupees per unit percent of contained lead metal per ton of ore and on pro rata basis
28	Zinc ore	Six rupees per unit percent of zinc metal contained per ton of ore and on pro rata basis	Sixteen rupees per unit percent of zinc metal contained per ton of ore and on pro rata basis

72. What follows from this discussion is that though royalty may have a definite connotation, the rate of royalty, its method of computation and the final levy are different from mineral to mineral. It is for this reason that this court held in ***NMDC*** that the Second Schedule to the MMDR Act has to be read as a part and parcel of Section 9 of that Act. If the general conclusion of ***SAIL*** is to be applied across the board without reference to the

Second Schedule to the MMDR Act, calculation of royalty on copper, gold, lead, zinc and some other minerals would become impossible.

73. It is quite clear that the issue of computation of royalty on minerals is rather complex and it is best left to the experts in the field and it cannot be painted with a broad brush as has been done in ***SAIL***. That decision must be confined to its own facts with reference to consumption of dolomite and limestone. Since the Second Schedule to the MMDR Act must be read as a part and parcel of Section 9 thereof, the interpretation given in ***SAIL*** possibly cannot apply to the computation of royalty for every mineral, as discussed above.

74. At this stage, it is necessary to refer to an unreported decision of this court.[20] That decision pertains to the removal of coal in relation to Section 9 of the MMDR Act. Interestingly, though a reference was made to ***SAIL*** this court adopted the view expressed by the Orissa High Court in ***National Coal Development Corporation Limited*** which was endorsed by

[20] Central Coalfields Ltd. v. State of Jharkhand, C.A. No.8395 of 2001 decided by three learned judges on 24th September, 2003

this court in appeal. The 'reasons' given in ***SAIL*** were not even adverted to. This unreported decision reads as follows:

> "The contention put forth in this case is that for the purpose of Section 9 of the Mines & Mineral (Regulation & Development) Act, 1957 the expression 'removal' would mean that it is not enough to extract the mineral from pit but should be dispatched out of the leased area. In our view word 'removal' would mean extracting the mineral from the pit's mouth after removal from the seam. This exact point has been considered by this Court in ***State of Orissa and Ors. v. Steel Authority of India Ltd.*** – (1998) 6 SCC 476 in which this Court has stated as follows:
>
> > "Another Division Bench of the Orissa High Court in National Coal Development Corpn. case while considering the question whether the coal extracted by the workmen for their own domestic consumption is exigible to levy of royalty, accepting the contention of the Revenue held "that removal from the seam in the mine and extracting the same through the pit's mouth to the surface satisfy the requirement of Section 9 in order to give rise to liability for royalty." This view of the High Court found approval by this Court in National Coal case (C.A. No.807 of 1976 decided on 5.12.1991) and this Court held that the lessee in that case was liable to pay royalty for the coal supplied to its workmen for consumption."
>
> In this view of the matter we find no substance in the matter. The appeal is dismissed accordingly."

75. In view of the decision of this court in ***Central Coalfields Ltd.*** the issue is no longer *res integra* and in so far as coal is

concerned, its "removal from the seam in the mine and extracting the same through the pit's mouth to the surface [satisfies] the requirement of Section 9 in order to give rise to liability for royalty."

Rule 64B and Rule 64C of the Mineral Concession Rules

76. The complexities of chargeability, computation and levy of royalty on different minerals have now been simplified, clarified and standardized with the insertion of Rule 64B and Rule 64C of the MCR with effect from 25th September, 2000.[21]

77. A plain reading of Rule 64B of the MCR, with which we are presently concerned, clearly suggests that the leased area mentioned therein has reference to the boundaries of the leased area given to a lease holder. Sub-rule (1) provides that

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[21] **64B. Charging of Royalty in case of minerals subjected to processing:** (1) In case of processing of run-of-mine mineral 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.

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.

if the ROM mineral is processed within the boundaries of that leased area, then royalty will be chargeable on the processed mineral removed from the boundaries of the leased area. However, if the ROM mineral is removed without processing from the boundaries of the leased area then in terms of sub-rule (2) royalty will be chargeable on the unprocessed ROM mineral. Rule 64B of the MCR is silent about removal of a mineral from the mine/pit-head but which is not removed from the boundaries of the leased area. This is a clear pointer that royalty is to be paid by the lease holder only on removal of the mineral from the boundaries of the leased area. This simplification and clarification takes care of some of the different and difficult situations that we have referred to above, namely, the stage of charging royalty on coal at the pit-head or post-beneficiation, the stage of charging royalty on iron ore at the pit-head or post-beneficiation, the stage of charging royalty on dolomite and limestone at the pit-head or after the removal of waste and foreign matter and of course the stage of charging

royalty on other minerals such as copper, gold, lead and zinc amongst others.

78. Similarly, Rule 64C of the MCR relates to royalty on tailings or rejects. As far as Tata Steel is concerned, its computation given in the Convenience Volume indicates that royalty is paid and payable on middlings and tailings. Rule 64C of the MCR makes it clear that royalty is payable on rejects when they are sold or consumed after being dumped. This will take care of situations such as that pertaining to silver, as mentioned in the affidavit of the Union of India.

79. There is nothing to indicate in Rule 64B and Rule 64C of the MCR that coal has been put on a different pedestal from other minerals mentioned in the MMDR Act read with the Second Schedule thereto. It is, therefore, difficult to accept the view canvassed by the Union of India that these rules "may not be particularly applicable on coal minerals." That apart, the stand of the Union of India is not definite or categorical ("may not be"). In any event, we are not bound to accept the interpretation given by the Union of India to Rule 64B and Rule

64C of the MCR as excluding only coal. On the contrary, in ***NMDC*** this court has observed that these rules are general in nature, applicable to all types of minerals, which includes coal. The expression of opinion by the Union of India is contrary to the observations of this court.

80. Therefore, on a plain reading of Rule 64B and Rule 64C of the MCR, we are of the opinion that with effect from 25th September, 2000 when these rules were inserted in the MCR, royalty is payable on all minerals including coal at the stage mentioned in these rules, that is, on removal of the mineral from the boundaries of the leased area. For the period prior to that, the law laid down in ***Central Coalfields Ltd.*** will operate, as far as coal is concerned, from 10th August, 1998 when ***SAIL*** was decided, though for different reasons.

81. We may mention that learned counsel for Tata Steel had reserved his right to challenge the constitutionality of Rule 64B and Rule 64C of the MCR should his interpretation of the law be not accepted, namely that royalty on coal is chargeable on the

extracted tonnage at the pit-head. Since we have not accepted this interpretation post the insertion of Rule 64B and Rule 64C in the MCR, we leave it open to Tata Steel to challenge the constitutionality of these rules either by reviving these appeals to this limited extent or by initiating fresh proceedings.

Appeals filed by TISCO

82. The issue about refund of excess royalty paid by TISCO arises only for the period from 10th August, 1998 when this Court delivered its judgment and order in ***SAIL.***

83. The claim for refund has been rejected by the High Court in its judgment and order dated 23rd July, 2002 in the following words:-

> "However, in view of the fact that the State [of Bihar] has been reorganized since 15th November, 2000, now in place of 'State of Bihar', 'State of Jharkhand' will be charging royalty, the appellant – TISCO shall not ask for refund of excess royalty if deposited."

84. A perusal of the above indicates that the High Court really gave no reason for denying the refund of the excess royalty paid by TISCO. For the reasons given in respect of Tata Steel keeping in view the decision rendered in ***Central Coalfields***

Ltd., we hold that TISCO is entitled to refund of royalty paid from 10th August, 1998 to 25th September, 2000. However, this amount need not be physically refunded but should be adjusted *pro rata* against future payments of royalty by TISCO over the next one year. TISCO is not entitled to refund of royalty paid after 25th September, 2000. The royalty paid by TISCO after 25th September, 2000 was correctly paid and in accordance with Rule 64B and Rule 64C of the MCR, which have not been challenged by TISCO.

85. We make it clear that we have not adverted to the issue of consumption of coal within the boundaries of the leased premises since that question does not arise in these appeals.

86. No other contention was urged before us.

Conclusion

87. Our conclusions are as follows:-

(1) The decision rendered in ***SAIL*** is confined to its own facts and to the minerals dolomite and limestone. The decision does not deal with removal of a mineral from the leased

area but deals with consumption within the leased area.

(2) The unreported decision of this court in ***Central Coalfields Ltd.*** approves the law laid down by the Orissa High Court in ***National Coal Development Corporation Ltd.*** to the effect that removal of coal from the seam in the mine and extracting it through the pit-head to the surface satisfies the requirements of Section 9 of the MMDR Act in order to give rise to a liability for royalty. This view was earlier approved by this court in ***National Coal Development Corporation Ltd.***

(3) In view of the insertion of Rule 64B and Rule 64C on 25th September, 2000 in the Mineral Concession Rules, the levy of royalty on coal has now been postponed from the pit-head to the stage of removal of the coal (whether unprocessed or ROM coal or whether beneficiated coal).

(4) In view of the decision in ***Central Coalfields Ltd.*** the entitlement of TISCO and Tata Steel to refund of royalty from 10th August, 1998 to 25th September, 2000 is recognized. For the period from 25th September, 2000

onwards, TISCO is obliged to pay royalty as per Rule 64B and Rule 64C of the Mineral Concession Rules.

(5) Tata Steel, like TISCO is liable to pay royalty on coal with effect from 25th September, 2000 in terms of Rule 64B and Rule 64C of the Mineral Concession Rules.

(6) The constitutional validity or the vires of Rule 64B and Rule 64C of the Mineral Concession Rules has not been adjudicated upon. It is open to Tata Steel either to revive these appeals limited to this question or to challenge the constitutionality and vires of these rules through a separate challenge.

88. The appeals are disposed of as above. However, the parties will bear their own costs.

.....CJI
(H.L. Dattu)

.....J
(Madan B. Lokur)

.....J
(A.K. Sikri)

New Delhi;
March 17, 2015