REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14874 OF 2017
(ARISING OUT OF SLP(C)No.19445 of 2004)

STATE OF UTTARAKHAND & ORS. ... APPELLANTS

VERSUS

KUMAON STONE CRUSHER ... RESPONDENT

WITH
C.A. No. 14446/2017 @ SLP(C) No.3189/2012
C.A. No. 14448/2017 @ SLP(C) No.1675/2012
C.A. No. 14922/2017 @ SLP(C) No.8713/2008
C.A. No. 14924/2017 @ SLP(C) No.10601/2008
C.A. No. 14923/2017 @ SLP(C) No.9523/2008
C.A. No. 14920/2017 @ SLP(C) No.6959/2008
C.A. No. 14921/2017 @ SLP(C) No.6958/2008
C.A. No. 14452/2017 @ SLP(C) No.950/2012
C.A. No. 14453/2017 @ SLP(C) No.1031/2012
C.A. No. 14464/2017 @ SLP(C) No.948/2012
C.A. No. 14465/2017 @ SLP(C) No.1169/2012
C.A. No. 14468/2017 @ SLP(C) No.1197/2012
C.A. No. 14469-14476/2017 @ SLP(C) No.2213-2220/2012
T.P.(C) No.76/2012
T.P.(C) No.77/2012
C.A. No. 14485/2017 @ SLP(C) No.1697/2012
C.A. No. 14486/2017 @ SLP(C) No.2082/2012
C.A. No. 14492/2017 @ SLP(C) No.2236/2012
C.A. No. 14493/2017 @ SLP(C) No.2081/2012
C.A. No. 14495/2017 @ SLP(C) No.2399/2012
C.A. No. 14497-14509/2017 @ SLP(C) No.3152-3164/2012
C.A. No. 14510-14523/2017 @ SLP(C) No.2938-2951/2012
C.A. No. 13122-13129/2017 @ SLP(C) No.3192-3199/2012
C.A. No. 13300/2017 @ SLP(C) No.1822/2012
C.A. No. 13301/2017 @ SLP(C) No.4832/2012
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C.A. No. 13320/2017 @ SLP(C) No.6144/2012
C.A. No. 13346-13358/2017 @ SLP(C) No.3512-3524/2012
C.A. No. 13360-13378/2017 @ SLP(C) No.3320-3338/2012
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C.A. No. 13399-13404/2017 @ SLP(C) No.8204-8209/2013
C.A. No. 13104/2017 @ SLP(C)No. 3457/2016
C.A. No. 2047/2006

J U D G M E N T

ASHOK BHUSHAN, J.

Delay condoned. Leave granted.

2. This batch of cases relates to levy of transit fee. Transit fee levied by three States, i.e., State of Uttar Pradesh, State of Uttarakhand and State of Madhya Pradesh is in question.

3. In exercise of power under Section 41 of Indian Forest Act , 1927 (hereinafter referred to as "1927 Act) rules have been framed by different States. State of U.P. has framed the Rules, namely, the Uttar Pradesh Transit of Timber & other Forest Produce Rules, 1978 (hereinafter

referred to as "1978 Rules"). After formation of the State of Uttarakhand in the year 2000, the above 1978 Rules were also extended by the State of Uttarakhand by 2001 Rules. State of Madhaya Pradesh has framed Rules, namely, the Madhya Pradesh Transit (Forest Produce) Rules, 2000(hereinafter referred to as "2000 Rules").

4. Several writ petitions were filed in the Allahabad High Court, Uttarakhand High Court and High Court of Madhya Pradesh challenging the levy of transit fee, validity of transit fee Rules and for other reliefs. The writ petitions filed by the writ petitioners were allowed by the Uttarakhand High Court whereas Allahabad High Court dismissed some writ petitions and allowed others. The Madhya Pradesh High Court has allowed the writ petitions by a common judgment dated 14.05.2007. The State of Uttarakhand and State of Uttar Pradesh has filed SLPs, in which leave has been granted, challenging the judgments of the High Courts in so far as writ petitions filed by the writ petitioners were allowed. The State of Madhya Pradesh has also filed appeals challenging the common judgment dated 14.05.2007. The writ petitioners

whose writ petitions were dismissed by the Allahabad High Court has also filed SLPs against the said judgment in which leave has been granted.

5. The entire bunch of cases before us can be described in four groups. **First group** consists of appeals filed by the State of U.P. as well as State of Uttarakhand challenging various judgments of Uttarakhand High Court by which writ petitions filed by the different writ petitioners for quashing the levy of transit fee were allowed. The **second group** of appeals consists of appeals filed by the State of U.P. challenging the judgment of Allahabad High Court dated 11.11.2011 and few other judgments by which writ petitions filed by the writ petitioners have been allowed. **Third group** of appeals has been filed by the writ petitioners whose writ petitions filed before the High Court either have been dismissed or the reliefs claimed in their writ petitions have not been granted. The **fourth group** of appeals has been filed by the State of Madhya Pradesh against the judgment dated 14.05.2007 by which writ petitions filed by the writ petitioners in the Madhya Pradesh High Court have been

allowed quashing the notification fixing the transit fee and directing for refund of the transit fee.

6. For comprehending the issues which have come for consideration in this batch of appeals, we shall first notice the facts in some of the writ petitions which have been decided by three High Courts, i.e., Uttarakhand, Allahabad and Madhya Pradesh.

7. The parties shall be hereinafter referred to as described in the writ petitions filed before the High Court.

FACTS

I. CIVIL APPEALS ARISING OUT OF JUDGMENTS OF UTTARAKHAND HIGH COURT.

8. There are nineteen appeals arising out of judgments rendered by Uttarakhand High Court. There are only three main judgments rendered by Division Bench of the High Court which have been followed in other cases. It is thus necessary to note the facts giving rise to above mentioned three judgments.

(1) Judgment dated 01.07.2004 in Writ Petition No. 1124 (M-B) of 2001, M/s Kumaon Stone Crusher vs.

State of U.P. & Ors.

[Giving rise to Civil Appeal (arising out of SLP No. 19445 of 2004, State of Uttaranchal & Ors. vs. State of Kumaon Stone Crusher and Civil Appeal (arising out of SLP No. 26273 of 2004, the State of U. P. & Ors. vs. M/s. Kumaon Stone Crusher.]

9. M/s Kumaon Stone Crusher filed a writ petition praying for quashing the order dated 14.06.1999 issued by Conservator of Forest and order dated 01.06.1999 issued by Divisional Forest Officer directing for making recovery and levy of Transit Fee upon the finished item of stone i.e. stone grits, stone chips etc from the writ petitioner. Petitioners case was that its stone crusher which collects the boulders from the bank of Sharda River, which is a Forest Produce, Transit Fee is charged and paid. After taking the boulders to the crushing centre and involving manufacturing process, boulders are converted into the commercial commodity, namely, stone grits and chips. It is pleaded that after it becomes a commercial commodity, it ceases to be as Forest Produce and no Transit Fee can be charged and recovered thereafter.

10. The Division Bench *vide* its judgment dated

01.07.2004 allowed the writ petition and quashed the orders dated 14.03.1999 and 21.06.1999. Both State of Uttarakhand and State of U. P. aggrieved by aforesaid judgments have filed the above noted several appeals.

(2) JUDGMENT DATED 30.03.2005 IN WRIT PET. NO.310 OF 2005, M/s. Kumaon Pea Gravel Aggregated Manufacturing Company vs. State of Uttarakhand and Ors.

[Giving rise to Civil Appeal (arising out of SLP No. 23547 of 2005 and Civil Appeal (arising out of SLP No. 24106 of 2007)]

11. Writ Petitioners, proprietary firms were carrying on the business of manufacturing & sale of finished produce of washed and single pea gravel and bajri. The Writ Petitioner used to purchase river bed material from the lessee of query on payment of royalty and trade tax on which Transit Fee is charged from the State of Uttarakhand. But when the writ petitioners transport their finished products from their factory to customers, Transit Fee is charged by State of Uttarakhand and further, when it crosses the border of Uttarakhand and enter into the State of U.P., the Transit Pass issued by

the State of Uttarakhand is to be surrendered and again Transit Passes are to be taken by making payment of the Transit Fee.

12. High Court allowed the writ petition *vide* its judgment dated 30.03.2005 holding that after river bed material is converted into the Washed & Single Pea Gravel and Bajri after involving manufacturing process, a new commercial commodity comes into existence and same ceases to be a Forest Produce. High Court allowed the writ petition holding that no Transit Fee can be realised. It was further observed that even if, same is treated as Forest Produce, Transit Fee can not be realised twice on the same material under 1978 Rules. Both State of U.P. and Uttarakhand had filed Civil Appeals against the aforesaid judgment.

(3) Judgment dated 26.06.2007 in Writ Petition No. 993 of 2004, M/s Gupta Builders vs. State of Uttaranchal & Ors.

13. The writ petitioner in the writ petition has prayed for issuing a writ of certiorari, quashing 1978 Rules as applicable in State of Uttaranchal (now Uttarakhand)

so far the 1978 Rules provides for Transit Pass and Transit Fee for boulders, sand and bajri, further not to enforce 1978 Rules as amended by the State of U.P. *vide* amendment Rules 2004.

14. Writ Petitioner, a Registered Partnership Firm was engaged in the business of purchase & sale of natural stones, boulders, sand & bajri and supplying the same to the various Government Departments including PWD. Writ Petitioner purchased boulders, sand, bajri from the Kol river bed from Uttaranchal Forest Development Corporation which is lessee. Writ Petitioner makes payment of royalty and other charges to the lessee. The Uttar Pradesh Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as 'Rules, 1963') has been adopted by the State of Uttarakhand, as Uttaranchal Minor Minerals (Concession) Rules, 2001(hereinafter referred to as 'Rules, 2001'). Uttaranchal Forest Development Corporation issues Form MM-11 to the writ petitioner.

15. Writ Petitioner pleaded that since royalty and other charges are being paid in accordance with the minor

mineral rules framed under the Mines and Minerals (Development & Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act, 1957'), no Transit Fee can be levied on the writ petitioner. The High Court allowed the writ petition holding that Transit Fee under Rules, 1978 can not be applicable on the transit of minor minerals. The levy of Transit Fee was held to be illegal.

16. Following the aforesaid judgment dated 26.06.2007 several other writ petitions were decided giving rise to different other Civil Appeals, which are Civil Appeal No.1010 of 2011, Civil Appeal(arising out of SLP No. 18094 of 2011) and Civil Appeal (arising out of SLP No. 26285 of 2011).

II. CIVIL APPEALS ARISING OUT OF JUDGMENTS OF ALLAHABAD HIGH COURT

17. A large number of Civil Appeals have been filed. Four Transfer Petitions and seven Contempt Petitions have also been filed. Civil appeals have been filed by the aggrieved parties against the various judgments of the Allahabad High Court. All the civil appeals filed by the

writ petitioners as well as by the State of U.P. centre around leviability of transit fee on different forest produces as per 1978 Rules.

18. Apart from various other judgments against which appeals have been filed, two judgments delivered by two Division Benches need to be specially noted by which judgments bunch of writ petitions numbering more then 100 have been decided. We shall notice these two judgments first before referring to facts of other cases.

CIVIL APPEAL NOS.2739-2762 OF 2008
(KUMAR STONE WORKS & Ors. VS. STATE OF U.P. & ORS.)
(arising out of judgment dated 27.04.2005 in Writ Petition No.975 of 2004, Kumar Stone Works & Others vs. State of U.P. & Ors.)

19. Several writ petitions were filed challenging the realisation of transit fee on transport of stone chips, stone grit, stone ballast, sand, morrum, coal, lime stone, dolomite etc. The writ petitioners have also challenged the validity of notification dated 14.06.2004 by which 1978 Rules were amended increasing the transit fee from Rs.5/- to Rs.38/- per tonne of lorry load of timber and other forest produce. By judgment dated

27.04.2005 bunch of writ petitions was decided consisting of petitions dealing with different materials. The High Court in its judgment has noticed details of few of the writ petitions facts of only leading petition which need to be briefly referred:

20. Writ Petition No.975 of 2004, which was stated to be leading writ petition:

Petitioners have been granted mining lease by the District Magistrate, Sonebhadra, for excavation of boulders, rocks, sand and morrum in the District of Sonebhadra from the plots situated on the land owned by the State Government which do not come within any forest area. The petitioners' case was that they do not carry any mining operation in the forest area. After excavation they transport the goods from the site to the destination by truck. The petitioners convert the stone and boulder into Gitti. It was further pleaded that while transporting the goods, they do not pass through the forest area and they are not using any forest road for the purpose of transportation of their goods. They pay

royalty to the State Government under the provisions of the U.P. Minor Minerals (Concession) Rules, 1963. The State's case was that the petitioners are procuring the grit, boulder etc. from the land of village Billi Markundi notified under Section 4 of the Indian Forest Act, 1927. The petitioners are carrying out mining operations in the forest land. With regard to some of the petitioners it was alleged that they are carrying business in the area which had already been notified as forest area under Section 4 of 1927 Act. It was pleaded by the State that grit, boulder etc. are being procured and transported from the forest which are the forest produce. The Transit Rules, 1978 has already been upheld by this Court.

21. The Division Bench after hearing the parties dismissed all the writ petitions holding the liability of the petitioners to pay transit fee. The High Court held that validity of the Rules have already been upheld by this Court in ***State of U.P. vs. Sitapur Packing Wood Suppliers, 2002 (4) SCC 566.*** The Court upheld the 2004 Amendment. The High Court also held that the words

"brought from forest" as occurring in Section 2(4)(b) of the 1927 Act, necessarily implies that it passes through the forest. It also held forest must be understood according to its dictionary meaning. This description covers all statutory recognised forest, whether designated as reserve, protected or otherwise. The Court held that all goods are passing through forest, hence, petitioners cannot deny liability to pay transit fee. The increase of transit fee to Rs.38/- can neither be said to be excessive or exorbitant or prohibitive.

22. The several civil appeals have been filed against the above judgment where the appellants reiterate their claim as they raised before the High Court.

Civil Appeal arising out of SLP(C)No.1675 of 2012
State of U.P.& Ors. vs. M/s. Ajay Trading (Coal)Co.& Ors.
(arising out of the judgment dated 11/21.11.2011) in Writ Petition No.963 of 2011 - M/s. Ajay Trading (Coal)Co.& Ors. vs. State U.P. & Ors.)

23. By judgment dated 11.11.2011, two batches of writ petitions were decided. First batch consisted of Writ (Tax) No.327 of 2008(NTPC Limited & another vs. State of U.P. and others) and other connected matters and second

batch consisted of Writ (Tax) No.963 of 2011 (M/s. Ajay Trading (Coal) Co. and others vs. State of U.P. & Ors.).

24. The first group of writ petitions of which Writ (Tax) No.327 of 2008 was treated as leading writ petition, was filed against the imposition of transit fee on the transportation of soil(mitti) and coal. NTPC Limited is a Government of India undertaking engaged in generation of electricity in its various units, one of them being Singrauli Super Thermal Power Station at Shakti Nagar, District Sonebhadra which is a Coal Based Thermal Power Station. For disposal of fly ash, soil is excavated from non-forest areas and it is transported by the route, which does not fall within the forest area. The Divisional Forest Officer has demanded transit fee on transportation of soil. By amendments the petitioners were also permitted to challenge Fourth and Fifth Amendment Rules, 1978.

25. The second group of writ petitions of which Writ (Tax) No.963 of 2011(M/s. Ajay Trading((Coal) Co. and others vs. State of U.P. & ors.) was treated as leading petition. That petitioners are incorporated as Public

Limited Co./Private Lt. Co./Proprietor Firm Manufacturers and Traders of goods made of forest produce, the miners, as transporters of forest produce who challenged the applicability of Indian Forest Act, 1927 on mines and minerals and other forest produce. The validity of Fourth and Fifth Amendment Rules by which transit fee was increased was also challenged. Both the above batch of writ petitions consisted of a large number of writ petitions dealing with various materials raising various facts and grounds, some common and some different.

26. The Division Bench by its judgment dated 11.11.2011 has set aside the Fourth and Fifth Amendment Rules increasing the transit fee. The Court recorded its conclusion in paragraph 187 of the judgment on various submissions raised by the learned counsel for the parties before it.

27. The claim of various writ petitioners that they are not liable to pay transit fee was, however, not accepted. Aggrieved against the judgment dated 11.11.2011 in so far as it struck down Fourth and Fifth Amendment Rules, the State of U.P. has come up in appeals whereas writ

petitioners who were denying the liability to pay transit fee have filed appeals against the judgment dated 11.11.2011 reiterating their claim that they are not liable to pay transit fee on various grounds as raised in their writ petitions. The claims in various writ petitions are different and also founded on different grounds. It is neither necessary nor desirable to notice the facts and claim in each case separately. The writ petitions which have been decided by both the judgments dated 27.04.2005 as well as 11.11.2011 consisted of different nature of writ petitions which can be broadly described in few groups. It shall suffice to notice facts and claims as raised in few cases of each group:

Group(A) This represents petitioners who have obtained mining leases under U.P. Minor Minerals (Concession) Rules, 1963 as well as leases of major minerals for mining of various minerals. Some of the mining lease holders are also transporting the minerals. There are other categories of petitioners who are only transporting the minerals by their factories. Stone crusher, dealers who are crushing the minerals and

transporting finished materials, all these petitioners denied their liability to pay transit fee.

Petitioners claim that the stone ballasts and grit, boulders etc. are minerals which are covered under MMDR Act, 1957 and no transit fee can be charged under 1978 Rules. Some of the petitioners say that they are transporting the minerals through State and National Highways by paying toll tax. Petitioners further state that the transit fee is charged twice that is on raw material as well as on finished goods which is not permissible. Check posts have been put on State and National Highways which are illegal.

Group(B) Petitioners in this group deal with coal/ hard coke/coal briquettes /softcoke /cinder (rejected coke). Petitioners claim that coal is not forest produce and it is governed by various Parliamentary Acts which covers the field. Petitioners further pleaded that they are not mining coal from forest area rather they are purchasing from Coal India Ltd. after payment of necessary expenses. They are not using any forest land and rather are using State and National highways and PWD

roads. Some petitioners obtained coal from a company or dealer by paying necessary charges. The petitioner is using U.P. roads as a passage only and going out of State of U.P. that is to Delhi and Haryana. Some petitioners also rely on exemption notification dated 29.03.2010.

Group(C) This group consisted of limestone, calcium hydroxide, marble, calcium oxide, dolomite, pawdis, etc. Petitioners claim that the aforesaid items are not forest produce. They further pleaded that they are using State and National highways as well as PWD roads and not using any forest road. They further pleaded that twice transit fee is charged, firstly on raw material and secondly on the finished products by Fourth and Fifth Amendment.

Group(D) This group consists of petitioners who are dealers in plywood, imported timber/wood, bamboo, veneer, waste of plywoods, wood charcoal. Petitioners claim that they are not passing through forest area in U.P. They are not transporting any forest produce rather are transporting finished goods. Petitioners are purchasing timber which is coming out of the country.

Group(E) This group consists of petitioners dealing

in fly ash, clinkers and gypsum. Petitioners claim to obtain the aforesaid material by manufacturing process. Petitioners claim that the aforesaid articles are not forest produce since they undergo chemical process.

28. In so far as writ petition included in group 'A' is concerned, we have noticed above the facts of Writ Petition No.26273 of 2004, M/s. Kumaon Stone Crusher, decided on 01.07.2004. Group 'B' consisting of petitioners who are dealing in coal/hard coke/coal briquettes/soft coke/cinder(rejected coke), etc. C.A. No.2706 of 2008 (M/s. Krishna Kumar Jaiswal vs. State of U.P. & Ors., is one of such writ petitions which was dismissed by the High Court on 27.04.2005.

29. In group 'B' reference is made to Civil Appeals arising out of SLP(C)Nos.34909-34916 of 2012 (M./s. Anand Coal Agency & Ors. etc.etc. vs. State of U.P. & Ors. etc.etc.). The writ petitioners-appellants are involved in trading of coal. Petitioners get coal after the acceptance of their bid by the Coal India Limited for the coal field concern. The petitioners imports coal from the outside the State of U.P. by road and do not use forest

roads. The coal is transported only by National highways and PWD roads. It was stated that collection of transit fee on coal is illegal and without jurisdiction. Levy on schedule minerals is exclusively subject matter of MMDR Act.

30. Another case in this context is Civil Appeal arising out of SLP(C)No.981 of 2012 (Lanco Anpara Power Ltd. vs. State of U.P. & Ors.). The writ petitioner-appellant is a Company carrying on the business in generation, distribution and sale of electricity in the State of U.P. Transit fee is charged on transportation of coal from the colliery to the thermal power unit of the petitioner at Anpara. The petitioner contends that condition precedent for applicability of transit fee with regard to forest produce as referred to in Section 2(4)(b)(iv) is that genesis of the produce in question must be traceable to forest. In the present, coal brought by the petitioner does not owe its genesis to a forest. The transit fee thus cannot be levied.

31. In group 'C', one of the cases is Civil Appeal arising out of SLP(C)No.36272 of 2011 (Agra Stone Traders

Association & Ors. vs. State of U.P. & Ors., the writ petitioners-appellants are engaged in the business of purchasing and selling of marbles, marbles goods, marble chips, stone chips, stone powder, dolomite, limestone chips and pawdis from the State Rajasthan, Madhya Pradesh, Karnataka, Andhra Pradesh, Orissa, etc. from various wholesale shopkeepers, industries/factories situated in the above said States. After purchasing the above said materials/finished goods the same are transported by them within the State of U.P. for sale to the consumers from the shops of the writ petitioners. The above materials are not directly transported from mines nor the same are in original form of mines and minerals. The petitioners have all necessary passes and invoices from different States. However, when petitioners' vehicles enter into the State of U.P. transit fee is being charged under 1978 Rules. The petitioners denied their liability to pay transit fee.

32. One of such cases is Civil Appeal No.1697 of 2012 (M/s. Aditya Birla Chemicals (India) Limited vs. State of U.P. & Ors.). The writ petitioner-appellant is a public

limited company who is engaged in the business of manufacture of chemicals and uses calcium hydroxide and calcium oxide. The petitioner pleads that calcium hydroxide is manufactured by treating lime with water at a particular temperature and calcium oxide is made by thermal decomposition of materials such as limestone, that contain calcium carbonate in a lime kiln which is accomplished by heating the material to above 825 degree centigrade. These products were also purchased from registered traders/manufacturers of the State of Rajasthan after obtaining invoices and passes. On such transportation the State of U.P. is levying transit fee. The product manufactured and purchased by the petitioners is not forest produce and no transit fee can be levied.

33. In group 'D', one of the cases is Civil Appeal arising out of SLP(C) No.30185 of 2012 (Arvind Kumar Singh & Anr. vs. State of U.P. & Ors.), the writ petitioner-appellant carries on the business of supplying bamboo, waste of plywood and small twigs/debarked jalawani lakdi of eucalyptus and poplar trees to paper manufacturing units. The paper manufacturing units, to

which the petitioner supplies are situate in the State of Haryana, Punjab, Uttar Pradesh and Madhya Pradesh. Waste of plywood is a waste product obtained from the plywood industries, which is processed to obtain chips. The purchases are not made by the petitioner inside any forest of Uttar Pradesh or any other State. The loaded trucks of the petitioner do not pass through any forest road. The waste of plywood and veneer is neither timber nor any kind of forest produce. They are products of human/mechanical effort and labour and a result of a manufacturing process. There is no liability to pay transit fee on the above items.

34. In group 'E', one of the cases is Civil Appeal arising out of SLP(C)No.5760 of 2012 (Ambuja Cements Limited vs. State of U.P. & Ors.). The writ petitioner-appellant is an ISO Co. for manufacturing of cement. The fly ash (a by product of Thermal Power Plants, purchased by the petitioners); and gypsum (a raw material used in the manufacture of cement and purchased by the petitioner) and clinker is not a forest produce. Clinker/fly ash is an industrial produced and cannot fall

in the ambit of forest produce as defined under Section 2(4) of 1927 Act. The manufacture of clinker comprises of two stages. In stage one raw material like lime stone, clay, bauxite, iron ore and sand are mixed in specific proportion and raw mix is obtained and in stage second the raw material is fed into kiln whereby at high temperature, chemical reaction occurs and the product obtained is 'alite' which is commercially sold as clinker. The petitioner though was not a party in the writ petition before the High Court but has filed the SLP with the permission of the Court granted on 10.02.2012.

III. TRANSFER PETITIONS

35. **Transfer Petition No.18 of 2012** has been filed under Article 139A for transferring the Writ Petition No.40 of 2000 pending in the High Court of Judicature at Allahabad. The writ petitioner is engaged in business of manufacturing and dealing in aluminium and semis. Hindalco owns and operates the Aluminium plant at Renukoot and captive thermal power plant is at Renusagar. Hindalco uses both bauxite and coal in the production of aluminium.

36. In December, 1999, the State of U.P. demanded transit fee on transport of minerals (bauxite and coal). Aggrieved thereby Writ Petition(C) No 40 of 2000 was filed. An Interim order was passed on 18.01.2000 restraining forest department from charging transit fee. This interim order continued till 29.10.2013 when this court passed detailed interim order.

37. The petitioner's case is that in SLP(C) No.11367 of 2007, Kanhaiya Singh & Anr. Versus State of U.P., the same question is engaging attention of this Court, hence, the Writ Petition filed by the petitioner be transferred and heard along with the aforesaid Special Leave Petition.

38. **Transfer Petition No.44 of 2012** has been filed to transfer Writ petition(tax) No.1629 of 2007 to hear it with SLP(C) No.11367 of 2007. The petitioner has set up coal based thermal power plant at Renusagar for captive generation of power which it supplies continuously to the aluminium manufacturing unit of the petitioner at Renukoot. In the process of generation of power the said thermal power plant produces the fly ash which needs to

be disposed of as per the directions of the Central Government.

39. The petitioner has entered into agreement with various cement manufacturers for lifting, disposal of fly ash. From November 2007, the forest department of the State started demanding transit fee from each Truck/Dumper. Even though the payment of any levy is the responsibility of contractors who are lifting the fly ash. The petitioner filed Writ Petition No.1629 of 2007 challenging the aforesaid demand of transit fee on fly ash in which the interim order was passed by the High Court on 29.11.2007. In the aforesaid background it was prayed that Writ Petition be transferred and heard along with SLP(C) No.11367 of 2007.

40. **Transfer Petition No.76 of 2012** has been filed by Aditya Birla Chemicals (India) Ltd. for transfer of Writ Petition no.101 of 2008 pending in the Allahabad High Court. The Petitioner is engaged in the business of manufacturing and sale of chemicals, casting soda, bleaching powder, sodium chloride etc. at its factory situated at Renukoot, District Sonebhadra. For continuous

supply of power to the manufacturing unit petitioner has set up coal based thermal power plant at Renusagar. Fly ash is generated from thermal power plant which needs to be disposed of. Petitioner made available the fly ash to seven cement industries free of cost. The petitioner maintained its own roads which is connecting National Highway No. 76E which goes one side to Madhya Pradesh and to Mirzapur on other side. From November 2007, forest department of U.P. Started demanded transit fee on supply of fly ash. After filing the Writ petition the various developments took place including decisions of bunch of writ petitions of 11.11.2011.

41. The petitioner case is that similar issues are pending in SLP(C) No.11367 of 2007 and Writ Petition be transferred and heard along with the aforesaid Special Leave Petition. This Court in all the above three Transfer Petitions, on 19.11.2012 passed an order to take up these matters along with the SLP(C) No.11367 of 2007.

IV. <u>CONTEMPT PETITIONS</u>

42. Contempt Petition No.251 of 2008 in I.A.No.7 of 2008 in Civil Appeal No.2797 of 2008, the members of applicants association are plying public transport truck carrying minor minerals like boulders, sand, stone, dust, etc. Trucks do not enter into any forest area or do not uses any forest road. In C.A.No.2797 of 2008 an interim order was passed by this court directing that there shall be stay of demand by way of transit fee in the meantime. Applicants case is that the applicant's association has also been impleaded in C.A. No. 2797 of 2008. It is pleaded that despite the knowledge of interim order of this court the respondent at different check posts are demanding transit fee. Prayer has been made to issue Show Cause Notice and initiate contempt proceedings. No Notice has been issued in the contempt proceeding as yet.

43. Contempt Petition(C) No.199-201 of 2014 in SLP(C) No.31530 of 2011 and other two Special Leave Petitions. Applicants are engaged in the business of transportation of sand, stones, polish stones, rough stones, crushed stones, stone grits, stone marbles etc. Applications claimed that whenever their vehicles entered in the State

of U.P., Transit fee is demanded. It is contended that in SLP(C) filed by the applicants this court on 02.12.2012 stayed the recovery of transit fee. Applicants case is that despite the knowledge of interim order dated 02.12.2012 the same is not being complied with, hence, the Contempt Petition has been filed. In Contempt application, no notice has been issued.

44. **One Writ Petition (C)No.203 of 2009** (M/s. Pappu Coal Master & Ors. vs. State of U.P. & Anr.) has also been filed where petitioners have prayed that respondent may be restrained from charging any fee from petitioners under the 1978 Rules as amended by Amendment Rules dated 14.06.2004. This writ petition was directed to be listed along with SLP(C)No.11367 of 2007.

V. CIVIL APPEALS AGAINST THE JUDGMENT DATED 14.05.2007 OF THE MADHYA PRADESH HIGH COURT

45. The State of Madhya Pradesh has filed appeals against a common judgment dated 14.05.2007 of the High Court of Madhya Pradesh. Civil Appeal arising out of SLP(C)No.6956 of 2008 has been filed against the common judgment rendered in six writ petitions which also

included Writ Petition No.2309 of 2002 (Northern Coalfields Limited vs. State of Madhya Pradesh and ors.

46. The writ petitioners-Northern Coalfields Limited is engaged in excavation and sale of coal. The State of M.P. framed M.P. Transit (Forest Produce) Rules, 2000 for imposing transit fee. The writ petitioner pleaded in the writ petition that the State of M.P. has no legislative competence for imposing any tax on coal. It was further pleaded that fee can be imposed only if there is any *quid pro quo* between the services rendered and fee charged. Notification dated 28.05.2001 issued by the State of M.P. fixing fee of Rs.7/- per metric tonne was challenged. Following reliefs were sought in the writ petition:

> *"i) Issue on appropriate writ/writs, order/orders, direction/directions to quash the authorisation of imposing transit passes on movement of coal under M.P. Transit pass (Forest Rule) 2000 ANNEXURE-P/1.*
>
> *ii) To quash the fixation of rates of fees for issuance of transit passes ANNEXURE-P/2.*
>
> *iii) To quash the demand for payment of fees for transit of coal ANNEXURE-P/3*
>
> *iv) To grant such other appropriate*

relief as deemed and fit and proper in the facts and circumstances of the case."

47. More or less similar reliefs were claimed in the other writ petitions before the M.P. High Court. In some of the writ petitions prayer was also made for issuing writ of mandamus declaring Section 2(4)(b)(iv) and Section 41 of the 1927 Act as unconstitutional and *ultra vires* to the extent it relates to minerals. Prayer was also made to declare M.P. Transit (Forest Produce) Rules, 2000 and notification dated 28.05.2001 as *ultra vires* to the power of the State under 1927 Act.

48. Counter-affidavit was filed by the State contending that as per Section 41 of 1927 Act, the State is conferred with a power to make rules to regulate the transit of all timer and other forest-produce.

49. The High Court after hearing the parties and considering the submissions by the impugned judgment quashed the notification dated 28.05.2001 by which fee of Rs.7/- was fixed. The High Court also directed refund of the amount in a phased manner with a period of five years. Aggrieved by the judgment dated 14.05.2001 the

State of Madhya Pradesh has filed these appeals.

50. We have heard learned counsel appearing for the States as well as learned counsel appearing for various writ petitioners.

51. While referring the respective submissions of the learned counsel, submissions on behalf of the writ petitioners have been referred to as submissions of writ petitioners and the submissions on behalf of the States have been referred to as on behalf of the State.

VI. Submissions with regard to the judgment of Uttarakhand High Court

52. As noted above both the State of Uttarakhand and State of U.P. have challenged the judgment of Uttarakhand High Court. Shri Dinesh Dwivedi, learned senior counsel questioning the judgment dated 01.07.2004 of Uttarakhand High Court in M/s. Kumaon Stone Crusher vs. State of Uttarakhand, submits that boulders crushed into grits retain same characteristic that is forest produce. By obtaining grits, stone chips and dust no new material is obtained. Challenging the judgment of Uttarakhand High Court in M/s. Gupta Builders dated 26.06.2007, it is

submitted that the mere fact that royalty has been paid by the writ petitioners in accordance with the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 as adopted in Uttarakhand by Uttarakhand Minor Minerals (Concession) Rules, 2001 shall have no effect on the entitlement of the State to levy transit fee. The judgment of the High Court that no transit fee can be levied on the minerals is erroneous. It is further submitted that the High Court erred in adopting a very restrictive meaning of word 'forest' whereas the forest has to be understood in a wide sense. It is contended that Forest Act, 1927 and MMDR Act, 1957 operate in different fields. In so far as the case of the writ petitioners is that transit fee is being charged for second transit also. It is submitted that transit pass has its destination and after it reaches its destination, the pass comes to an end, the transit fee can be validly charged.

53. Replying the above submission of State, learned counsel for writ petitioners submits that main challenge in the writ petitions filed by petitioners was that no

Transit Fee can be levied on finished products from the stone crusher. It is contended that river bed materials i.e. boulders and bajri by applying mechanical process are converted into small size stone grits, chips and dust which become a commercial commodity and ceases to be a Forest Produce therefore no Transit Fee can be charged. It is further contended that in Section 2(4)(b) of the 1927 Act the words 'found in' and 'brought from' are qualified by word 'when', which denotes the time factor. The word 'when' signifies that the item while leaving the forest is in continuous process of transit from the point where it is said to be found in. But once, the continuous transit of forest produce terminates at any point of place which is not a forest item included in Clause B(4)(2), shall cease to be a Forest Produce and further transit of such material being material not brought from forest shall not attract tax under Section 41 of Act, 1927.

54. The stone or sand which is in its primary or dominantly primary state is subjected to a manufacturing process for making it marketable product, which is not a

Forest Produce. Act, 1927 does not provide for any definition of term 'Manufacturing Process'. The term 'Manufacturing Process' is to be given a liberal interpretation. The process of stone crushing have to be held to be Manufacturing Process. It is further contended that levy of Transit Fee on Transit Pass does not have any relationship with the distance of the destination of the transit and the Transit Pass originally issued at the time of First Sale of transit required only on endorsement and the insistence of levy of Transit Fee at the time of second transit is irrational and unreasonable.

55. Learned counsel for the State of U.P, challenging the judgment of High Court of Uttarakhand has also raised the similar submissions as has been raised by the learned counsel for the State of Uttarakhand.

VII. SUBMISSIONS RELATING TO JUDGMENTS OF THE ALLAHABAD HIGH COURT.

56. Following are various submissions on behalf of several writ petitioners and their reply by State:-

(i) (a)The products which are being transited by them

or on their behalf are not Forest Produce since they have undergone manufacturing process resulting into a new commodity. All the writ petitioners supported the judgment of Uttarakhand High Court dated 01.07.2004 in M/s Kumaon Stone Crusher wherein, the High Court has held that no levy of Transit Fee can be made on the finished items of stone i.e. stone grits, sand grits & chips etc. They submitted that in the stone crusher, factories, boulders and stones obtained from different mining lessees are subjected to a process by which different items are formed thereby losing their character of Forest Produce. Several other materials like lime stone, fly ash, clinker, calcium hydro-oxide and calcium oxide, cinder, gypsum are also obtained after undergoing a manufacturing process, which are no longer a forest produce. Another group of petitioners who deal with marble stone, stone slabs and tiles also raise similar submission that marble slabs are finished goods which are different from Forest Produce and no Transit Fee can be demanded.

(b)Another group of petitioners who deal with in

veneer, plywood also claimed that after undergoing manufacturing process veneer and plywood are no longer a Forest Produce hence, no Transit Fee can be charged. Last category of articles for which non-leviability of transit fee is claimed comprises of coal, hard coke, finished coal, coal briquettes, soft-coke. With regard to coal it is submitted that coal is not a Forest Produce at all, since it is obtained from collieries which are not in forest. It is further submitted that in view of Mines and Minerals (Development & Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act, 1957) and Coal Bearing Areas (Acquisition & Development) Act, 1957, the regulation of coal is outside the Indian Forest Act, 1927 (hereinafter referred to as 'Act, 1927').

(c)The above submissions of writ petitioners have been refuted by learned counsel appearing for State of U.P. and State of Uttarakhand. It is submitted that stone boulders and stone ballasts after being subjected to crushing by which stone grits, sand grits & chips are obtained, does not in any manner change the nature

of product. Stone grits, sand grits & chips obtained after crushing are still a Forest Produce on which Transit Fee is charged. Accepting the aforesaid argument will lead to a situation where State shall lose its regulatory power on Forest Produce on mere facial change of the Forest Produce. With regard to other articles the State has refuted the submission and it is submitted that all the articles claimed by the writ petitioners are Forest Produce which are subject to Transit Fee.

(d)With regard to parliamentary enactments relating to coal as claimed by the writ petitioners, it is submitted that parliamentary enactments regarding coal are on different subjects and has no effect on the Act, 1927 and the rules framed therein.

(e)Learned Additional Advocate General of the State of U.P., during his submission has submitted that in so far as, fly ash, clinker and synthetic gypsum are concerned, the State does not claim them to be Forest Produce and no Transit Fee shall be charged on fly ash, clinker and synthetic gypsum. He, however, submitted

that gypsum is a naturally mined Forest Produce and what is excluded is only synthetic gypsum.

(f)For veneer and plywood, it is submitted that veneer is small pieces of timber which remains a Forest Produce and plywood is also a kind of timber which retains its natural character of Forest Produce. With other articles, with regard to which, it is claimed that by manufacturing process and chemical treatment they are transformed to new commercial commodity is refuted by counsel for the State.

(ii) (a)One of the the main planks of attack of learned counsel for the writ petitioners to the 1927 Act & 1978 Rules is based on 1957 Act. It is submitted that 1957 Act is enacted by the Parliament in reference to Entry 54 of List I of Seventh Schedule of the Constitution of India. It relates to regulation of mines and the development of minerals to the extent to which such regulation and development under the control of the Union is declared by the Parliament by law. The legislative competency of the State with regard to mines and minerals development is contained in Entry 23 of List II which Entry is subject

to provisions of List I with respect of mines and minerals development under the control of the Union of India. It is submitted that in so far as transit fee on minerals is concerned, the entire field is covered by 1957 Act wherein there is a declaration by the Parliament that Union shall take under its control the regulation of mines and the development of minerals to the extent provided therein. The entire regulation of minerals including its transport being covered under 1957 Act, the State is denuded of any jurisdiction to legislate. It is further contended that 1957 Act is a special enactment which shall override the 1927 Act which is a general enactment. It is further contended that provisions of 1978 Rules and the provisions of Section 41 of Forest Act, due to the repugnancy to the provisions of 1957 Act shall stand overridden. The transit and transportation of minerals is an integral part of regulation and development of minerals and the Parliament having unequivocally enacted the law it is to occupy the entire field regarding the transit and transportation of minerals and development of mines. No other law can

trench upon occupied field. The provision of Forest Act, 1927 including Section 41 and Transit Fee Rules, 1978 framed thereunder shall stand impliedly repealed after enactment of 1957 Act, especially after insertion of Section 4(1A) and Section 23C by Act 38 of 1999 with effect from 18.12.1999.

(b)Learned counsel for the State refuting the above submissions contends that repugnancy between a parliamentary statute and a statute of State legislature arises when the two laws operate in the same field, they collide with each other. It is submitted that subject matters of 1927 Act and 1957 Act are distinct and different. In 1927 Act provisions relating to transport of forest produce is only incidental and ancillary in nature. The object of two legislations is entirely different. Forest Act, 1927 comprehensively deals with forest and forest wealth whereas 1957 Act deals with mines and minerals wealth. He further submits that 1957 Act does not impliedly overrule the 1927 Act, both the legislations being under different subjects. It is submitted that argument

of implied repeal could have arisen only where there is no option. To take a view that 1957 Act shall impliedly overrule 1927 Act regarding transit of forest- produce, the control of the State under Section 41 shall be lost and the very purpose and object of the Forest Act shall be defeated. An activity of mining held in a forest cannot be regulated and prevented by mining officers in the forest area, they cannot enter into forest area and exercise their powers. The machinery for enforcement of forest laws and the mining laws are different. Their powers are different, officers are different, consequences of breach are different and both provisions operate in different fields. It is thus submitted that the provisions of Indian Forest Act, 1927 in so far as Section 41 of 1927 Act and 1978 Rules are concerned, shall not stand impliedly overruled by Parliamentary enactment of 1957 Act.

(iii) (a)It is submitted that Division Bench of the Allahabad High Court in ***Kumar Stone Works and others*** by its judgment dated 27.04.2005 has mis-interpreted the words "brought from" as contained in Section 2(4)(b) of

1927 Act. It is submitted that there is no issue with regard to the words ”found in”. The words “found in” clearly mean found in a forest. The word “when” signifies the physical presence of the item. The word 'when' also qualifies the words “brought from a forest”. Thus when a forest produce is brought from a forest, the things mentioned in sub-clause (1) of sub-section (4) of Section 2 will be treated as forest produce. The thrust of the submission is that the words 'brought from forest', mean that the forest produce originated from forest. For any produce to be forest to be brought from forest means it is starting point of transit and not in transit. The Division Bench of the High Court in its judgment dated 27.04.2005 erred in equating the words “brought from forest” as “brought through forest”. The High Court has held that even forest produce passes through forest area it shall be liable to payment of transit fee.

(b)It is further submitted by the learned counsel for the writ petitioners that in fact the Division Bench of the Allahabad High Court wide its order dated 04.03.2008 in ***M/s. Nagarjuna Construction Ltd.*** has

already expressed its disagreement with the Division Bench judgment in ***Kumar Stone Works and others v. State of U.P. and others, 2005 (3) AWC 2177,*** and referred following two questions for consideration of the larger Bench:

> *(i) Whether the words 'brought from' used in section 2(4)(b) of the Indian Forest Act would cover such items mentioned in sub-clauses (i) to (iv) of Section 2(4) (b) which though did not have origin in the forest but they are transported through a forest?*
>
> *(ii) Whether the interpretation of the words 'brought from' given by Division Bench in Kumar Stones Case(Supra) is correct? Let the papers be placed before the Hon'ble Chief Justice for appropriate orders."*

(c)It is submitted that the Division Bench of Allahabad High Court while delivering the judgment dated 11.11.2011 although noticed that the above questions have been referred to for consideration of a larger Bench did not await the judgment of larger Bench rather chose to follow the Division Bench judgment in ***Kumar Stone Works.***

(d)Learned counsel for the State has refuted the

aforesaid submission. It is submitted that the Division Bench of the Allahabad High Court in ***Kumar Stone Works*** has correctly held that the term 'brought from a forest' must be read to mean 'brought through a forest'. It is submitted that any other interpretation would render the term to be in conflict with the term 'found in a forest'. It is submitted that the High Court has referred to various dictionary meanings of word 'brought' and after relying on said definition the Division Bench held that the words 'brought from' mean 'brought through forest'.

(iv) (a)One more submission which has been raised by the writ petitioners is that the word 'forest' as used in 1927 Act as well as in Transit Fee Rules, 1978 has to be read as 'forest' as enumerated in the 1927 Act, i.e., a reserved forest, a village forest and a protected forest. Thus, transit fee can be charged only when forest produce transit through a reserved forest, a village forest or a protected forest. It is submitted that the Division Bench in its judgment dated 11.11.2011 has adopted a very expensive definition of forest when it held that the

forest has to be understood as a large track of land covered with trees and undergrowth usually of considerable extent, on the principles of sound ecological and scientific basis reflecting sociological concerns. Learned counsel for the petitioners submits that the definition of forest as adopted by the Division Bench of Uttarakhand High Court in M/s. Gupta Builders in Writ Petition No.993 of 2004 giving rise to C.A.No. 1008 of 2011(State of Uttar Pradesh vs. M/s. Gupta Builders & Ors.) is a correct definition of forest. It is submitted that Uttarakhand High Court has rightly adopted a restrictive meaning of forest in the Forest Act, 1927.

(b)The above submission of learned counsel for the petitioners is opposed by the State of U.P. It is submitted by learned senior counsel that the word 'forest' has to be understood broadly and the definition of forest as given by this Court in ***T.N. Godavarman Thirumulkpad vs. Union of India and others, 1997 (2) SCC 267,*** is to be followed and the Division Bench in its judgment dated 11.11.2011 has correctly interpreted the word 'forest'.

(v) (a)Some of the writ petitioners have submitted that although they are not passing through any forest but still transit fee is charged by the State on the ground that several State highways, PWD roads and several roads have been declared protected forests by the State of U.P. by issuing notification under the provisions of 1927 Act. It is submitted that passing through National highways and State highways cannot be treated akin to passing from any kind of forest so as to attract leviability of transit fee.

(b)Learned Additional Advocate General for the State of U.P. submits that the roads from which the petitioners claim to have passed are roads which have been declared as protected forests. Hence, forest produces transiting from the above roads are liable to pay transit fee. In support of his submission he refers to notification dated 10.02.1960 issued under proviso to sub-section (3) of Section 29 as well as Section 80A of 1927 Act.

(vi) (a)One of the submissions raised by learned counsel for the petitioner is that Rule 3 read with

Schedule A of 1978 Rules is totally independent of Rule 5 and same has no correlation with each other. Rule 3 and Schedule A nowhere contemplates or has a column prescribing charging of a fee. It is submitted that transit fee is chargeable on transit pass issued under Rule 4(b) which is required to be checked under Rule 6(4) only. Referring to Rule 5, it is submitted that Rule 5 contemplates charging a fee in those cases in which transit is done on the transit pass issued under Rule 4(1)(b) and checked under Rule 6(4).

(b)It is submitted that fee cannot be charged in any other case. The above submissions have been refuted on behalf of the State. It is contended that on all transit pass issued under the Rule 1978 transit fee is required to be paid.

(vii) The petitioners further submitted that although no final notification has been issued under Section 20 of 1927 Act but still the Forest Department treats several areas in the District of Sonebhadra and other Districts as forest area and transit fee is asked for treating the said areas as forest area. It is submitted that Section 4

notification is only a preliminary notification which cannot be treated as notification declaring the area as reserved forest.

(viii) (a)Learned counsel for the petitioners submitted that the Constitution Bench judgment of this Court in ***State of West Bengal vs. Keshoram Industries and ors, (2004) 10 SCC 201*** where Constitution Bench held that Union's power to regulate and control does not result in depriving the States of their power to levy tax or fees within their legislative competence without trenching upon the field of regulation and control of the Union, need not be relied on.

(b)The Constitution Bench also interpreted Seven-Judge Bench decision in ***Synthetics and Chemicals Ltd etc vs. State of U. P. and ors., (1990) 1 SCC 109.*** It is submitted that with regard to the interpretation put by the Constitution Bench in ***State of West Bengal vs. Keshoram Industries (supra)*** a reference has already been made to a Nine Judge Bench by reference order dated 30.03.2011 in ***Mineral Area Development Authority vs. Steel Authority and India Ors., (2011) 4 SCC 450.***

(ix) The State of U.P. cannot realize transit fee as per Third Amendment Rules dated 09.09.2004. Third Amendment Rules having been substituted by Fourth & Fifth Amendment Rules and Fourth & Fifth Amendment Rules having been struck down by judgment dated 11.11.2011, Third Amendment Rules shall not revive. Third Amendment Rules are not in existence.

VIII. Following are the submissions on behalf of State of U.P. in support of Civil Appeals filed by them and their reply by the writ petitioners thereto:-

57. Shri Ravindra Srivastava, learned senior counsel leading the arguments on behalf of the State of U.P. contends that this Court in ***State of U.P. and others vs. Sitapur Packing Wood Suppliers and others, 2002(4)SCC 566,*** has upheld the validity of 1978 Rules and has pronounced that transit fee is a regulatory in nature and for regulatory fee *quid pro quo* is not necessary. The High Court for its judgment has relied on ***Jindal Stainless Ltd.(2) and Anr. Vs. State of Haryana and Ors., 2006 (7) SCC 241,*** which has been overruled by 9-Judges Constitution Bench in ***Jindal Stainless Ltd. & Anr. v.***

State of Haryana & Ors., 2016(1) Scale 1, the very basis of the judgment of the High Court is knocked out. The State being entitled to levy transit fee it can change the basis of levy of transit fee. That option on the basis of *advalorem* is also permissible both for fee and tax and no exception can be taken to the Fifth Amendment on the ground that the Fifth Amendment adopts *advalorem* basis for fixing the fee. The increase in transit fee by Fourth and Fifth Amendments cannot be held to be arbitrary or excessively disproportionate. The finding of the High Court that the State had not provided any data to justify the increase in transit fee is incorrect since the State had in fact by a table which itself has been noted in paragraph 85 of the judgment has mentioned the income and expenditure related to transit fee, a perusal of which could indicate that the expenditure of State Government was much more than collection of transit fee even after Fifth Amendment. The value of timber and other forest-produce has increased manifold. The increase in levy of transit fee had become necessary to meet the ever increasing expenditure incurred by the State. The High

Court committed error in striking down Fourth and Fifth Amendments without there being any sufficient and valid ground.

58. Learned counsel for the writ petitioners have vehemently opposed the above submission and supported the judgment of the High Court striking down the Fourth and Fifth Amendment Rules. It is submitted that ***Jindal Stainless (2)*** overruled by the judgment of 9-Judges constitution Bench does not have much bearing in the facts of the present case. The High Court independent of reliance placed on ***Jindal Stainless (2)*** has held that transit fee is excessive in nature and the State of U.P. had not produced data for justifying the increase in the transit fee. It is true that for regulatory fee *quid pro quo* is not to be proved but the State was obliged to prove a broad correlation between the levy of transit fee and the expenditure incurred by the State on the transit of forest-produce. The High Court in paragraph 177 to 186 has considered the issue in detail and has returned findings to support its conclusion that exorbitant increase in transit fee has robbed the regulatory

character of the transit fee which has become confiscatory and has partaken character of tax. The figures given in paragraph 85 of the judgment are figures of expenditure of the entire forest department which can have no correlation with the collection of transit fee. The entire expenditure of the forest department cannot be met by collection of transit fee. The State does not give any detail of expenditure which it has actually incurred in regulation of transit of the forest-produce.

59. Learned counsel for the writ petitioners have demonstrated by different charts of the respective increase in the transit fee by Fourth and Fifth Amendment Rules as compared to fee which was being charged under Third Amendment Rules. It is submitted that regulatory fee could not have been charged on *advalorem* basis which is generally adopted for levying a tax and not a fee. The charging of transit fee by Fourth and Fifth Amendment Rules, is for the purposes of augmenting the Revenue of the State and not for regulation of transit which changes the character of transit fee into a tax, which is not permissible under

law.

60. After noticing the respective submissions of both parties, we now proceed to consider them in the same seriatum.

IX. Whether by Manufacturing process/chemical Treatment as claimed by the writ petitioners, the forest produce looses its character of forest produce.

61. We first take the case of writ petitioners of stone boulders which are crushed into stone grits, stone chips and stone dust etc. Stone boulders are obtained from riverbed, stone rocks & stone mines. After crushing of the stone boulders, stone grits, stone chips and stone dust are obtained which does not transform into any new commodity, except that the stone in smaller pieces and shapes are obtained. The Allahabad High Court, in its judgment in Kumar Stone Works (Supra) decided on 27.04.2005 has given a detailed reasoning for not accepting stone grits, stone chips and stone dust as a new commodity. It held that the character of Forest Produce is not lost by such

crushing of the stone. High Court of Uttarakhand has taken a contrary view in its judgment dated 01.07.2004 in Kumaon Stone Crusher (Supra), as noted above.

62. Learned counsel for the writ petitioners have relied on few judgments of this Court which need to be noticed. Reliance is placed on Two Judge Bench in ***Suresh Lohiya vs. State of Maharashtra and another, (1996) 10 SCC 397***. In the above case, the question for consideration was, as to whether, the Bamboo mat is a Forest Produce. The definition of 'Timber' and 'tree', given in sub clause 6 and sub clause 7 of Section 2 was noticed which is to the following effect:

> *"2. (6) 'timber' includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not; and*
>
> *2.(7) 'tree' includes palms, bamboos, stumps, brushwood and canes."*

63. The above judgment of this court was based on 'consideration of definition of timber and tree' as given in Section 2 (6) & 2 (7). This Court held that definition of timber included tree and all wood whether cut or fashioned or hollowed out for any purposes. This

Court held that said definition of timber cannot be read in definition of tree which includes Bamboo hence, fashioned Bamboos are not included in the definition of tree. The Bamboo mat was thus held, not to be a Forest Produce. The above judgment was based on its own facts and does not help the writ petitioner in the present case.

64. In ***CST vs. Lal Kunwa Stone Crusher (P) Ltd., (2000) 3 SCC 525,*** the Court was considering liability of Trade Tax on stone chips, gittis and stone ballast. The question raised before the Court was, as to whether, the stone gittis, sand chips and dust continue to be stone grits, chips and dust or after crushing them, they get converted into a new commercial products, so as to attract the tax on their sale. The case of dealer was that at the time of purchase of goods sales tax has been paid hence, goods emerging out of same are not liable to be taxed again. This Court held that the word 'stone' is wide enough to accept various forms of grits, gitti, kankar and ballast hence, no tax

was leviable on the sand chips, grits & dust etc. In para 5 following was held:

> *"5. The view taken by the Tribunal as affirmed by the High Court is that the goods continue to be stone and they are not commercially different goods to be identified differently for the purposes of sales tax. The decision relied on by the minority view in the Tribunal in Reliable Rocks Builders & Suppliers v. State of Karnataka turned on the concept of consumption of goods for the purpose of bringing into existence new goods. In that case the Court was not concerned with an entry of the nature with which we are concerned in the present case. Where the dealer had brought into existence new commercial goods by consuming the boulders to bring out small pieces of stone, it was held that such activity attracted purchase tax. In the present case, however, stone, as such, and gitti and articles of stones are all of similar nature though by size they may be different. Even if gitti, kankar, stone ballast, etc. may all be looked upon as separate in commercial character from stone boulders offered for sale in the market, yet it cannot be presumed that Entry 40 of the notification is intended to describe the same as not stone at all. In fact the term "stone" is wide enough to include the various forms such as gitti, kankar, stone ballast. In that view of the matter, we think that the view taken by the majority of the Tribunal and affirmed by the High Court stands to reason. We are, therefore, not inclined to interfere with the same."*

65. The above judgment held that the nature and character of the stone remains the same, even after, crushing the boulders into small stones, dust etc. Reliance by the writ petitioner is also placed on judgment in ***(2003) 3 SCC 122, Tej Bahadur Dube (Dead by Lrs.) vs. Forest Range Officer F. S. (S.W.), Hyderabad.*** In the above case, the appellant was charged for violation of Rule 3 to 7 of the A.P. Sandalwood and Red Sanderswood Transit Rules, 1969. The assessee was found transporting finished sandalwood products. He was charged with the violation of aforesaid rules. Assessee's case was that he has obtained permission of the authorities for converting sandalwood purchased by him into various types of handles which are ultimately used in other sandalwood handicrafts. This Court held that sandalwood products which have been converted into such products after obtaining proper permission was not prohibited, in para 6 following was held:

> *"6. As noticed above, the original appellant was a holder of a licence to deal in and stock sandalwood. From the material on record, it is seen that the said appellant*

had obtained necessary permit from the competent authorities for converting the sandalwood purchased by him into various types of handles which are ultimately used in other sandalwood handicrafts which permission was valid up to 31-12-1982 period covering the period of seizure. The appellant had contended that it is pursuant to the said permission he had converted the sandalwood pellets into handles to be used in the other sandalwood artefacts and he had informed the authorities concerned about such conversion as per Exts. P-18 to P-27. It is also the case of the appellant that converted sandalwood artefacts or parts thereof do not require any transit permit and it is only sandalwood in its original form or chips and powder of sandalwood which requires a transit permit. The trial court has agreed with this submission of the appellant. We also notice under the Rules and the Act what is prohibited is the transportation of sandalwood as defined in Section 2(o) of the Act and not sandalwood products which have been converted into such products after obtaining proper permission from the authorities. Such converted sandalwood products under the Rules do not require any transit permit. We say so because the Rules referred to in these proceedings do not contemplate such transit permit and the respondents have not produced any other Rules to show such transit permit is required. On the contrary, the respondent argues that even converted sandalwood products require transit permit because they remained to be sandalwood as contemplated under Section 2(o) of the Act. In the absence of any specific rules or provisions in the Act to this effect, we are

> *unable to agree with this argument. We are of the opinion that once sandalwood is subjected to a certain process from which a sandalwood product is lawfully obtained, then such product ceases to be sandalwood as understood in Section 2(o) of the Act."*

66. The above case also does not lend any support to the case of writ petitioners. In the above case, appellant had obtained permission of the competent authority for converting the sandalwood into various types of handles hence, the transportation was not found violative of rules.

67. In this context, it is necessary to refer to a Three Judge Bench Judgment of this court in ***Karnataka Forest Development Corporation Ltd. vs. Cantreads Private Limited and others (1994) 4 SCC 455.*** This Court had occasion to consider Karnataka Forest Act, 1963. Caoutchouc or latex covers natural covering sheets of various grades or not, was the question under consideration. After noticing the various dictionary meanings of caoutchouc, it was held that since processing does not result in bringing out a new commodity but it preserves the same and rendered it fit for markets, it

does not change its character hence, it remained a Forest Produce. Thus rubber sheets converted from caoutchouc continue to be a Forest Produce. In the above case, this court has also held that a 'test of commercial parlance' by considering entries in sales tax is not applicable while considering the definition of Forest Produce.

68. The Court observed that the definition of Forest Produce is in technical or botanical sense. The above judgment fully supported the contention of the State that while considering the definition of the Forest Produce, scientific and botanical sense has to be taken into consideration and commercial parlance test may not be adequate in such cases.

69. We thus are of the view that judgment of Division Bench of the Allahabad High Court dated 27.04.2005 in Kumar Stone Works deserved to be approved and judgment of Uttarakhand dated 01.07.2004 in ***Kumaon Stone Crusher*** deserves to be set aside in so far as above aspect is concerned.

70. Now, we come to the case of marble slabs & tiles, chips etc. Writ Petitioners have placed reliance on Three Judge Bench Judgment in ***Income Tax Officer, Udaipur vs. Arihant Tiles and Marbles Private Limited, (2010) 2 SCC 699.*** The question of consideration in the above case was that whether conversion of raw marbles blocks into final products or polished marble slabs or tiles in factory constitute 'manufacture or production' so as to entitle the assessee relief under 80-1A(2)(iii). This Court held that process which was applied by the assessee will come in the category of 'manufacture or production'. In para 16 of the judgment following was stated:

> *"16. In the present case, we have extracted in detail the process undertaken by each of the respondents before us. In the present case, we are not concerned only with cutting of marble blocks into slabs. In the present case we are also concerned with the activity of polishing and ultimate conversion of blocks into polished slabs and tiles. What we find from the process indicated hereinabove is that there are various stages through which the blocks have to go through before they become polished slabs and tiles. In the circumstances, we are of the view that*

> *on the facts of the cases in hand, there is certainly an activity which will come in the category of "manufacture" or "production" under Section 80-IA of the Income Tax Act."*

71. In the above view, this Court held that assessee was entitled for the benefit of Section 80-1A of the Income Tax Act, 1961. The above case was directly concerned as to what was the 'manufacture or production', which was defined in the Act itself and the marble slabs or tiles were held to be covered by 'manufacture or production'. The case was on its own facts and the Court was not concerned, as to whether, the marble blocks after it became marble slabs or tiles loses its nature or character of Forest Produce. The said judgment does not help in the present case.

72. This Court in ***Akbar Badrudin Giwani vs. Collector of Customs, Bombay, (1990) 2 SCC 203***, again reiterated that the general principle of interpretation of tariff entries according to any tax statutes of a commercial nomenclature can be departed from where the application of commercial meaning or trade nomenclature runs counter to the statutory context. In the present case

statutory context of Forest Produce as defined in Act, 1927 has to be taken in its botanical and scientific sense.

73. We thus conclude that the Transit Fee on marble slabs and tiles cannot be denied and the State did not commit any error in demanding the Transit Fee on transit of aforesaid goods.

74. It goes without saying that on forest produce which are exempted by notification issued under Proviso to Rule 3 of 1978, no transit fee is leviable. One of such notification dated 29.03.2010 has been brought on record.

X. Whether coal (and its various varieties), lime stone, dolomite, fly ash, clinker, gypsum, veneer and plywood are forest produce ?

75. Coal is formed from plant substances preserved from complete decay in a normal environment and later altered by various chemical and physical agencies. There are four stages in coal formation: peat, lignite, bituminous and anthracite. The stage depends upon the conditions to which the plant remains are subjected after they were

buried – the greater the pressure and heat, the higher the rank of coal. Higher-ranking coal is denser and contains less moisture and gases and has a higher heat value than lower-ranking coal.

76. The formation of coal itself is due to large tracts of forest getting buried under the ground due to natural processes such as floods and sedimentation. Further, a major portion of the coal reserves of the country are situated beneath forest lands and clearance for mining of the same from forest lands. Coal, thus, is clearly a forest produce.

77. Hard coke and soft coke are made from coal. Coke can be formed naturally as well as by synthetic method. Hard coke, soft coke, coal briquettes are all different variations of coal which do not shed their natural characteristic and are all forest produce.

78. Limestone is expressly mentioned in definition of forest produce, slake lime/quick line/hydrated line are all produce of limestone. Further, produce known quicklime is produced by heating of limestone, upon which limestone breaks down into Calcium oxide (quicklime) and

carbon dioxide. That upon adding water to the same, the quicklime is converted into slaked lime and thereafter, upon being carbonated, the produce will revert to its natural state of being limestone. Hence, the said process does not change the nature of the product, as the basic ingredient is essentially limestone, and merely upon heating and addition of water, the nature of the produce i.e. limestone, does not change. Hence, limestone is a forest produce.

79. Dolomite is a sedimentary rock. Dolomite is formed by the post depositional alteration of lime mud and limestone by magnesium-rich ground water. Dolomite and limestone are very similar stones and are forest produce.

80. Coming to fly ash, clinker and gypsum, learned Additional Advocate General has submitted before us that the State has accepted that fly ash, clinker an synthetic gypsum are not forest produce. Thus, fly ash, clinker and synthetic gypsum are not forest produce. Gypsum is naturally found and obtained in the natural form, hence it is a forest produce.

Veneer and waste plywood

81. The veneer is nothing but thin sheets of wood which are cut from existing logs & planks, which is then again glued upon planks of wood. The essential nature of the product of veneer is merely sliced/cut up wood. Hence, it continues to be a forest produce.

82. The waste plywood that is remains of plywood and veneer are nothing but cut-up logs. The process of manufacturing involves placing logs and wood into a specialized machine, which cuts out thin sheets of wood from the log. That when the logs reaches a certain diameter of thickness, the same can no longer be suitable for extraction by the machines and unutilized wood is left behind in the process of slicing as well. Essential character of the product does not change, hence, it comes within the definition of timber and forest produce.

XI. <u>FOREST ACT 1927 & MMDR ACT, 1957</u>

83. We now proceed to consider the impact of 1957 Act on Forest Act, 1927 and the Transit Fee Rules 1978 framed under Section 41 of 1927 Act. The Indian Forest Act, 1927

is a pre-constitutional legislation enacted by Indian legislature as per Section 63 of Government of India Act, 1915. 1927 Act was the law enforced in the territory of India immediately before the commencement of the Constitution and by virtue of Article 372 of the Constitution of India, 1927 Act continues in force until altered or repealed by a competent legislation. The 1927 Act was enacted to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce. The 1957 Act was enacted for regulation of mines and development of minerals under the control of the Union. The 1957 Act was enacted under Entry 54 of List I of the Constitution which is to the following effect:

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

84. List II also contains Entry 23 which relates to regulation of mines and mineral development. Entry 23 List II is as follows:

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

85. Entry 23 of List II has been made subject to provisions of List I. The Parliamentary legislation in reference to Entry 54 to the extent regulation and development of minerals declared under control of the Union of India is extracted from the legislative field of the State.

86. The writ petitioners contend that State is denuded with legislative competence regarding mineral, its regulation or transportation. Learned counsel for the writ petitioners have referred and relied on the various pronouncements of this Court in reference to Parliamentary enactment 1957. It is not necessary to refer to a large number of cases of this Court on the subject, the reference of only few of such cases shall serve the purpose for the present case.

87. The Constitution Bench judgment of this Court in ***Hingir-Rampur Coal Co., Ltd. and others vs. The State of***

Orissa and others, AIR 1961 SC 459, needs to be noted. The State of Orissa has enacted Orissa Mining Areas Development Fund Act, 1952 by which levy and demand was raised. The appellant challenged the enactment on the ground that legislation covers the same field which was occupied by 1957 Act referable to Entry 54 of List I. Considering the submission of the appellant, the Constitution Bench stated following:

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

88. The validity of 1957 Act was considered in the context of Industries (Development and Regulation)

Act,1951 and Mines and Minerals(Development and Regulation) Act, 1948. This Court repelled challenge to the 1952 Act on the ground that the declaration under 1948 Act was not referable to Entry 54.

89. The next judgment which needs to be considered is ***State of Orissa vs. M.A. Tulloch and Co., 1964(4)SCR 461.*** Orissa Mining Areas Development Fund Act, 1952 came for consideration in reference to Mines and Minerals (Development and Regulation) Act, 1957. This Court held that 1952 Act was enacted by virtue of legislative power under Entry 52 of List II whereas 1957 Act was enacted in reference to Entry 54 of List I. This Court held that Central Act 1957 contained a declaration as contained in Section 2 which is to the following effect:

> "***Section 2.Declaration as to the expediency of Union control.-*** *It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."*

90. After noticing the above declaration, this Court laid down following:

> *"It does not need much argument to realise that to the extent to which the Union Government had taken under "its control" the regulation and development of minerals" so much was withdrawn from the ambit of the power of the State Legislature under Entry 23 and legislation of the State which had rested on the existence of power under that entry would to the extent of that "control" be superseded or be rendered ineffective, for here we have a case not of mere repugnancy between the provisions of the two enactments but of a denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make and has made."*

91. This Court further held that intention of the Parliament was to cover the entire field. The Court held that after enactment of 1957 Act, 1952 Act shall disappear. This Court, thus, upheld the demands which were raised for the period upto June, 1958.

92. There cannot be any dispute to the proposition as laid down in the above noted cases and several other subsequent judgments of this Court reiterating the above proposition. The ratio laid down above, however, is not attracted in the facts of the present case. The present is not a case where the legislation, 1927 Act and Rules

1978 are referable to Entry 23 of List II. The present is a case where we are concerned with a pre-constitutional legislation which is 1927 Act which has been continued as per Article 372 of the Constitution. Article 372 sub-clause (1) is as follows:

> "***372.Continuance in force of existing laws and their adaptation.-*** *(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority."*

93. The law which has been continued in force by virtue of Article 372 is to continue until altered or repealed or amended by a competent legislature. Several pre-constitutional laws which have been continued under Article 372 came before this Court for consideration wherein Article 354 was also considered.

94. A Constitution Bench of this Court in ***B.V. Patankar and others vs. C.G. Sastry, AIR 1961 SC 272,*** had occasion to consider Mysore House Rent and Accommodation Control

Order, 1948, which was a pre-constitution law and by Part B States (Laws) Act, 1951 extended the operation of Transfer of Property Act, 1882 in the State of Mysore. In the above case arguments were raised that the House Rent and Accommodation Control Order, 1948 as extended in Mysore from April, 1951 became repugnant and was repealed. It was held that the pre-constitutional law which was saved by Article 372 remained unaffected by Article 254. Following was stated in paragraph 7:

> *"7. ....The argument, therefore, that as from April 1, 1951, as a result of repugnancy the House Rent Control Order of 1948 stood repealed must be repelled as unsound and cannot be sustained, because it was an existing law which was saved by Article 372 of the Constitution and remained unaffected by Article 254...."*

95. In ***Pankajakshi (Dead) Through Legal Representatives and others vs. Chandrika and others, 2016 (6) SCC 157,*** a Constitution Bench of this Court had occasion to consider a pre-constitutional law, i.e., Travancore-Cochin High Court Act in the context of Code of Civil Procedure(Amendment) Act, 1976. In the above case an earlier judgment of this Court, namely, ***Kulwant Kaur and***

others vs. Gurdial Singh Mann (Dead) by Lrs. And others, 2001 (4) SCC 262, came to be considered wherein this Court had occasion to consider Section 42 of Punjab Courts Act, 1918. This Court held that Article 254 of the Constitution would have no application to such a law for the simple reason that it is not a law made by the legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. In paragraph 27 following has been held:

> *"**27.** Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This*

> *being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri Viswanathan's reliance upon this authority, therefore, does not lead his argument any further."*

96. Thus, to find out as to whether the 1927 Act and Rules, 1978 framed thereunder survive even after enforcement of 1957 Act, we have not to look into Article 254 but we have to find out as to whether the above pre-constitutional law is **altered or repealed or amended by a competent legislature.** To find out this competent legislation as contemplated by sub-clause (1) of Article 372 in the context of pre-constitutional law the nature and content of pre-constitutional law has to be found out. There cannot be any dispute that Act, 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. Essentially the 1927 Act is related to the forest. In the Constitution initially the forest was in Entry 19 of List II. Thus, it was the State legislature which was competent to alter or repeal or amend the said law. Various amendments in the 1927 Act were made by the State of U.P. in different provisions of 1927 Act in exercise of its legislative power as conferred by List II.

97. By the Constitution (Forty-second Amendment) Act, 1976, with effect from 03.01.1977 Entry 19 was omitted from List II and transferred in List III as Entry 17A. Entry 17A is "Forests". Thus, with effect from 03.01.1977, both the Parliament and the State legislature are competent legislature within the meaning of Article 372 sub-clause (1). The question to be answered thus is as to whether a competent legislature has altered or repealed or amended 1927 Act.

98. Writ Petitioners have also contended that 1927 Act in so far as Section 41 and Transit Fee Rules, 1978 are

concerned, stand impliedly repealed by virtue of 1957 Act and in any view of the matter after amendment of 1957 Act by Act 38 of 1999 by which specific provisions regarding transport of minerals were inserted in 1957 Act, Section 4(1A) and Section 23C which were inserted with effect from 18.12.1999.

99. Justice G.P. Singh in Principles of Statutory Interpretation, 14th Edition, explained the implied repeal as follows:

> *"There is a presumption against a repeal by implication; and the reason of this rule is based on the theory that the Legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation. When the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle expressio unius est exclusio alterius. Further, the presumption will be comparatively strong in case of virtually contemporaneous Acts. The continuance of existing legislation, in the absence of an express provision of repeal, being presumed, the burden to show that there has been a repeal by implication lies on the party asserting the same. The presumption is, however,*

> *rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act 'that the two cannot stand together'. But, if the two may be read together and some application may be made of the words in the earlier Act, a repeal will not be inferred…"*

100. This Court in ***Municipal Council, Palai through the Commissioner of Municipal Council, Palai vs. T.J. Joseph*** in ***AIR 1963 SC 1561,*** has elaborated the concept of implied repeal in following words:

> *"**9.** It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well-settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new act are so inconsistent with the old ones that the two cannot stand together. As has been observed by Crawford on Statutory Construction, p. 631, para 311:*
>
> > *"There must be what is often called 'such a positive repugnancy between the two provisions of the old and the*

> *new statutes that they cannot be reconciled and made to stand together'. In other words they must be absolutely repugnant or irreconcilable. Otherwise, there can be no implied repeal ... for the intent of the legislature to repeal the old enactment is utterly lacking."*

The reason for the rule that an implied repeal will take place in the event of clear inconsistency or repugnancy, is pointed out in Crosby v. Patch and is as follows:

> *"As laws are presumed to be passed with deliberation, and with full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the Legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable. Bowen v. Lease (5 Hill 226). It is a rule, says Sedgwick, that a general statute without negative words will not repeal the particular provisions of a former one, unless the two acts are irreconcilably inconsistent. 'The reason and philosophy of the rule,' says the author, 'is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in*

> *general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to effect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all."*

For implying a repeal the next thing to be considered is whether the two statutes relate to the same subject-matter and have the same purpose. Crawford has stated at p. 634:

> *"And, as we have already suggested, it is essential that the new statute cover the entire subject matter of the old; otherwise there is no indication of the intent of the legislature to abrogate the old law. Consequently, the later enactment will be construed as a continuation of the old one."*

The third question to be considered is whether the new statute purports to replace the old one in its entirety or only partially. Where replacement of an earlier statute is partial, a question like the one which the court did not choose to answer in the Commissioners of Sewers case would arise for decision.

10. *It must be remembered that at the*

> *basis of the doctrine of implied repeal is the presumption that the legislature which must be deemed to know the existing law did not intend to create any confusion in the law by retaining conflicting provisions on the statute book and, therefore, when the court applies this doctrine it does no more than give effect to the intention of the legislature ascertained by it in the usual way i.e. by examining the scope and the object of the two enactments, the earlier and the later."*

101. The question of repeal by implication arises when two statutes become inconsistent to the extent that competence of one is not possible without disobedience to other.

102. The principles for ascertaining the inconsistency/repugnancy between two statutes were laid down by this Court in ***Deep Chand vs. State of U.P and others, AIR 1959 SC 648.*** K. Subba Rao, J. speaking for the Court stated following in paragraph 29:

> *"29……Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:*
>
> > *(1) Whether there is direct conflict between the two provisions;*

> *(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature and*
>
> *(3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."*

103. The Constitution Bench in ***State of Kerala and others vs. Mar Appraem Kuri Company Limited and another, 2012 (7) SCC 106,*** had occasion to consider when by a subsequent enactment the case of *pro tanto* repeal can be read. In the above case State of Kerala had enacted Kerala Chitties Act, 1975. The Seventh Schedule of the Constitution, List III Entry 7 pertains to contracts including special forms of contracts. The Parliament enactment, Chit Funds Act, 1982 and State legislature Kerala Chitties Act, 1975, the subject being under concurrent list, in paragraph 27, the Court held that when there is a conflict in respect of a matter in the concurrent list between Parliamentary and the State legislations, Parliamentary legislation will pre-dominate by virtue of *non obstante* clause of Article 254 and by

reason of Article 372 sub-clause (1). This Court held that the legislative intent to abrogate or wipe off the former enactment is to be looked into to find out whether it is a case of *pro tanto repeal*. Following was stated in paragraph 19:

> *"**19**. Further, the learned counsel emphasised on the words "to the extent of the repugnancy" in Article 254(1). He submitted that the said words have to be given a meaning. The learned counsel submitted that the said words indicate that the entire State Act is not rendered void under Article 254(1) merely by enactment of a Central law. In this connection, it was submitted that the words "if any provision of a law" and the words "to the extent of the repugnancy" used in Article 254(1) militate against an interpretation that the entire State Act is rendered void as repugnant merely upon enactment by Parliament of a law on the same subject."*

104. A repeal may be brought about by subsequent legislation without any reference to the legislation intended to be repealed, since, it matters little as to whether repeal is done expressly or inferentially. As noted above, 1957 Act was enacted in reference to Entry 54 of List I to provide for the regulation of mines and

the development of minerals whereas the subject of the legislation under the 1927 Act was the forest, transit of forest-produce and the duty leviable on timber and other forest-produce.

105. It is *sine qua non* that both the sets of laws must deal with "**the same subject matter**". In the instant case, under the Forest Act "transit of forest-produce" itself is subject of primary legislation as can be seen from the preamble and the provisions to Section 41 & 42 of the Act. In contrast, the 1957 Act in view of Section 2 thereof, gives control to the Union under its control "Regulation of Mines and Development of Minerals". The detailed provisions as primary legislation, deal with regulation of mines and development of minerals (Section 4 to 17 and Section 18). For the purposes of Regulation of Mines and Development of Minerals, it is provided that no mining operation can be undertaken without the license or permit as per Section 4. Provisions relating to transport or storage are only incidental and ancillary in nature. But the main point of difference is the subject matter of legislation under the 1957 Act is "Regulation

of Mines and Development of Minerals".

106. When the minerals are forest-produce by definition under the 1927 Act under Section 2(4), validity of which is not challenged, forest-produce and its transit is altogether a different subject matter than the subject matter governed by 1957 Act. The object of the two legislations is different. The regulation is different. The Forest Act comprehensively deals with forest and forest wealth with a different object and the 1957 Act deals with mines and mineral wealth.

107. Much emphasis has been given by the counsel for the writ petitioners on Section 4(1A) and Section 23C. Section 4(1A) is couched in negative as follows:

> *"No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder."*

108. Section 23C provides power of State Government to make rules for preventing illegal mining, transportation and storage of minerals.

109. The Rules may cover inspection, checking and search

of minerals at the place of excavation as well as transit of the minerals. The Rules under Section 23C are only incidence of regulation of minerals which is the subject matter of the 1957 Act.

110. The 1927 Act is a comprehensive statute relating to transit of forest-produce and the duty leviable on timber and other forest-produce.

111. The 1927 Act provides comprehensive provisions with regard to reserved forest, village forest and protected forest. The forests are directly linked with environment and ecological balance but because of large human development, exploitation of forests and other natural resources and deforestation, the international community has been alarmed, several international conventions and treaties were made including Kyoto Protocol and Paris Convention to which India is a signatory.

112. Article 48A also inserted by the Forty-second Amendment Act, 1976 which is to the following effect:

> "***48A. Protection and improvement of environment and safeguarding of forests and wild life.-*** *The State shall endeavour to protect and improve the environment and to safeguard the forests and and wild*

life of the country.”

113. Article 51A of the Constitution lays down as one of the fundamental duties that every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

114. As per the National Forest Policy, 1988 issued by the Ministry of Environment & Forests, one of the basic objectives if the State is to 'encourage efficient utilization of forest produce and maximizing substitution of wood' and states that “the principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium, which are vital for sustenance of all lifeforms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.”

115. The subjects of 1927 Act and 1957 Act are thus distinct and separate. The 1957 Act was on development and regulation of mines and minerals. Mines and minerals

are also found in forests. The definition of forest-produce as contained in Section 2 sub-section (4) of the Act includes peat, surface oil, rock and minerals(including lime-stone, laterite, mineral oils, and all products of mines or quarries).

116. The State has been empowered to regulate transit of forest-produce under Section 41 of the Act. Regulation of transit of forest-produce is a larger activity covering transit of different kinds of forest-produce including minerals. Both the legislations being on different subject matters the provisions relating to transportation of minerals as contained in 1957 Act can at best be said to be incidentally affecting the 1927 Act, incidental encroachment of one legislation with another is not forbidden in the constitutional scheme of distribution of legislative powers.

117. This Court has time and again emphasised that in the event any overlapping is found in two Entries of Seventh Schedule or two legislations, it is the duty of the Court to find out its true intent and purpose and to examine the particular legislation in its pith and

substance. In ***Kartar Singh vs. State of Punjab, 1994 (3) SCC 569,*** paragraphs 59, 60 and 61 following has been held:

> *"**59**....But before we do so we may briefly indicate the principles that are applied for construing the entries in the legislative lists. It has been laid down that the entries must not be construed in a narrow and pedantic sense and that widest amplitude must be given to the language of these entries. Sometimes the entries in different lists or the same list may be found to overlap or to be in direct conflict with each other. In that event it is the duty of the court to find out its true intent and purpose and to examine the particular legislation in its 'pith and substance' to determine whether it fits in one or other of the lists. [See : Synthetics and Chemicals Ltd. v. State of U.P.; India Cement Ltd. v. State of T.N."*
>
> ***60**. This doctrine of 'pith and substance' is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in the various lists i.e. a law dealing with the subject in one list is also touching on a subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment. On a scrutiny of the Act in question, if found, that the legislation is in substance one on a matter assigned to the legislature enacting that statute, then that Act as*

> *a whole must be held to be valid notwithstanding any incidental trenching upon matters beyond its competence i.e. on a matter included in the list belonging to the other legislature. To say differently, incidental encroachment is not altogether forbidden.*

118. In ***A.S. Krishna and others vs. State of Madras, AIR 1957 SC 297*** this Court laid down following in paragraph 12:

> *"12. This point arose directly for decision before the Privy Council in Prafulla Kumar Mukherjee v. The Bank of Commerce, Ltd. [1946 74 I.A. 23 There, the question was whether the Bengal Money-Lenders Act, 1940, which limited the amount recoverable by a money-lender for principal and interest on his loans, was valid in so far as it related to promissory notes. Money-lending is within the exclusive competence of the Provincial Legislature under Item 27 of List II, but promissory note is a topic reserved for the center, vide List I, Item 28. It was held by the Privy Council that the pith and substance of the impugned legislation begin money-lending, it was valid notwithstanding that it incidentally encroached on a field of legislation reserve for the center under Enter 28. After quoting its approval the observations of Sir Maurice Gwyer C.J. in Subrahmanyan Chettiar v. Muttuswami Goundan, (supra) above quoted, Lord Porter observed :*

> *"Their Lordships agree that this passage correctly describes the grounds on which the rule is founded, and that it applies to Indian as well as to Dominion legislation.*
>
> *No doubt experience of past difficulties has made the provisions of the Indian Act more exact in some particulars, and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provision should be attributed and those which are merely incidental. But the overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdictions. Subjects must still overlap, and where they do, the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, must beneficent legislation would be satisfied at birth, and many of the subjects entrusted to Provincial legislation could never effectively be dealt with."*

119. Further in ***Union of India and others vs. Shah Govedhan L. Kabra Teachers' College, 2002 (8) SCC 228*** in paragraph 7 following was laid down:

> *"7. It is further a well-settled principle that entries in the different lists should be read together without giving a narrow meaning to any of them. Power of*

Parliament as well as the State Legislature are expressed in precise and definite terms. While an entry is to be given its widest meaning but it cannot be so interpreted as to override another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them. When it appears to the court that there is apparent overlapping between the two entries the doctrine of "pith and substance" has to be applied to find out the true nature of a legislation and the entry within which it would fall. In case of conflict between entries in List I and List II, the same has to be decided by application of the principle of "pith and substance". The doctrine of "pith and substance" means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature. When a law is impugned as being ultra vires of the legislative competence, what is required to be ascertained is the true character of the legislation. If on such an examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. In order to examine the true character of the enactment, the entire Act, its object, scope and effect, is required to be gone into. The question of invasion into the territory of another

> *legislation is to be determined not by degree but by substance. The doctrine of "pith and substance" has to be applied not only in cases of conflict between the powers of two legislatures but in any case where the question arises whether a legislation is covered by particular legislative power in exercise of which it is purported to be made."*

120. Thus, even it is assumed that, in working of two legislations which pertain to different subject matters, there is an incidental encroachment in respect of small area of operation of two legislations. Legislation cannot be struck down as being beyond legislative competence nor it can be held that one legislation repeals the other. Thus, when we look into the pith and substance of both the legislations, it is clear that they operate in different field and the submission cannot be accepted that 1957 Act impliedly repeals the 1927 Act in so far as Section 41 and 1978 Rules are concerned.

121. We, thus, conclude that the submission of learned counsel for the writ petitioners that in view of the 1957 Act especially as amended by Act 38 of 1999, the provisions of 1927 Act & 1978 Rules have become void, inoperative and stand repealed, cannot be accepted.

XII. Interpretation of Section 2(4)(b) of 1927 Act

122. The meaning of words 'brought from' as used in Section 2 sub-section (4) sub-clause (b) has become very significant in the present case since it is a case of large number writ petitioners that the goods which they are transiting did not originate from any forest area rather they have been taken from non-forest area, hence, there is no liability to pay transit fee. Whether forest produce as defined in Section 2 sub-section (4) sub-clause (b) should be forest produce which originated from forest or even the forest produces which are merely passing through a forest area shall attract the liability of transit fee is the question to be answered.

123. The Division Bench judgment of the Allahabad High Court in ***Kumar Stone Works,*** although has referred to various definitions of meaning of word 'brought' but it did not advert to the fact as to what meaning has to be attributed to word 'from' with which word the word 'brought' is prefixed. The word 'from' has been defined in *Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd*

Edition in following words:

> *"From: As used as a function word, implies a starting point, whether it be of time, place, or condition; and meaning having a starting point of motion, noting the point of departure, origin, withdrawal, etc., as he travelled "from" New York to Chicago. Silva V. MacAuley, 135 Cal App. 249, 26 P.2d 887. One meaning of "from" is "out of." Word "from" or "after" and event or day does not have an absolute and invariable meaning but each should receive an inclusion or exclusion construction according to intention with which such word is used. Acme Life Ins. CO. v. White, Tex. Civ. App. 99 SW 2d 1059, 1060. Words "from" and "to", used in contract, may be given meaning to which reason and sense entitles them, under circumstances of case. Woodruff v. Adams, 134 Cal App.490, 25 P, 2d 529."*

124. The word 'from' is used to denote a point of time, a place or a period. Both the words 'found in or brought from' have been used before word 'forest'. Both the words that is 'found in' and 'brought from', has clear nexus with forest. The true meaning of the words 'brought from' has to be appreciated when read in the context of word 'found in'. The word 'brought from' is an expression which conveys the idea of the items having their origin in the forests and they have been taken out from the

forest. The word 'from' refers to the place from which the goods have been moved out that is from the place of their original location. The forest is birth place, the origin of the items mentioned in sub-clauses (1) to (iv) of sub-clause(b) of Section 2(4). The 'found in' means that the item which has origin from the forest, is found in the forest while 'brought from' means that items having origin in forest have moved out from the forest.

125. The 1978 Rules framed under Section 41 of the 1927 Act also reflect that rule making authority has also understood the meaning of word 'brought from' in the above sense. As per Rule 3 no forest produce shall be moved to or from or within the State of U.P. except or without a transit pass in the form in the Schedule A. The Schedule A of the Rules contains the form. Item No.1 of the form is as follows:

> "1. Locality of origin;
>
> (a) name and situation of forest,
>
> (b) name of forest owner."

126. The above Item No.1 also thus clearly refers to locality of origin of the produce and form requires name

and situation of forest and name of the forest owner. Thus, locality of origin is related to a forest which supports the interpretation as placed by us.

127. Learned counsel for the writ petitioners have also placed reliance on a judgment of the Division Bench of the Karnatka High Court in ***Yeshwant Mony Dodamani and Ors. (1962 CRLJ 832).*** The Division Bench had occasion to consider the definition of forest produce as contained in sub-section (4) of Section 2 of the Act. In paragraph 6 of the judgment following has been stated:

> *"6. On a plain reading of these expressions 'found in' or 'brought from', there can hardly be any doubt that both of them indicate the forest to be the source or original depository of the forest produce in question. The learned Government Pleader has very strenuously contended that the expression 'found in' a forest merely means 'come across' or 'discovered' in a forest irrespective of the fact whether the article or goods so discovered were originally sourced or deposited or grown in a forest or some other place which is not a forest. All that is necessary, according to the learned Government Pleader, is that somebody (meaning apparently a forest officer or a forest guard or other person acting under the authority of the Act or Rules) finds or discovers these goods within, the area of a forest Same argument, however, is not available nor is it pressed with, reference to other expression 'brought*

from' a forest. It is conceded that the expression 'brought from' a forest certainly excludes the idea of a thing being brought from outside the forest but taken through it. It is, however, contended that if an article so brought from outside the forest is 'found' i.e., discovered by somebody within a forest, it would come within the definition. We find it difficult to accept this argument which places extreme strain both on the language and upon logic. The expression at the commencement of Clause (b) of Section 2(4) should be compared with the expression at the commencement of Clause (a) of Section 2(4). The articles listed under Clause (a) become forest-produce by virtue of their own nature, whether they are found in a "forest or not, or brought from a forest or not. On the other hand, the articles listed under Clause (b) become forest-produce, not by virtue of their nature alone, but by virtue of the fact that they are found in or brought from a forest. The term 'found in' a forest does not necessarily, in our opinion, require an actual discovery of those items by a living person before those items can become forest-produce.

In our opinion, the term 'found in' actually refers to things growing in a forest like timber trees, fuel trees, fruits, flowers etc. or mineral deposits or stones existing in the forest. The distinctive feature is either the existence or the growth or deposit within the area of a forest and not their discovery by some living person. The idea underlying the expression 'brought from' is equally emphatic of the source of the thing so brought being within the area of a forest. The conveyance or transport involved in the idea of a thing being brought undoubtedly has its beginning in the forest by virtue of the use of the

expression 'from.'"

128. We are of the view that Gujarat High Court has correctly interpreted the word "brought from" as occurring in clause (b) of Section 2(4). We are, thus, of the view that the word 'brought from' has to be understood in the above manner. We, however, may clarify that the origin of forest produce may be in any forest situate within the State of U.P. or outside the State of U.P. Since, transit pass is necessary as per Rule 3 for moving a forest produce into or from or within the State of U.P. Any produce, goods entering within or the outside the State which is the forest produce having originated in the forest requires a transit pass for transiting in the State of U.P. Conversely, any goods which did not originate in forest whether situate in the State of U.P. or outside the State but is only passing through a forest area may not be forest produce answering the description of forest produce within the meaning of Section 2(4)(b).

XIII. <u>Meaning of 'Forest'</u>

129. Safeguarding of forest has also been recognised by

our Constitution under Article 48A which oblige the State to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51A sub-clause(g) enumerates the fundamental duty of every citizen of India to protect and improve the natural environment including the forests, lakes, rivers, wildlife.

130. The Forest Conservation Act, 1980 is another Parliamentary enactment which has been specifically enacted to provide for the conservation of the forest and for matters connected therewith. The definition of forest cannot be confined only to reserved forests, village forests and protected forests as enumerated in 1927 Act. This Court has already held in ***T.N. Godavarman Thirumulkpad vs. Union of India and others, 1997 (2) SCC 267,*** that the word "forest" must be understood according to its dictionary meaning, in paragraph 4 following is stated:

> *"4....The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of*

> *Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof..."*

131. Thus, forest shall include all statutorily recognised forests, whether designated as reserve, protected or otherwise. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government records irrespective of the ownership. The restrictive meaning of forest as given by the Uttarakhand High Court in M/s Gupta Builders cannot be approved.

132. It is relevant to note that even before this Court's definition in ***T.N. Godavarman case (supra)*** in expensive manner, the forest was understood by the State legislature in a very wide manner. This is reflected by

definition of forest and forest land as given in Section 38A inserted by Uttar Pradesh Amendment Act 5 of 1956 with effect from 3.12.1955. The definitions of 'forest' as given in Section 38A(b) and 'forest land' in 38A(c) of 1927 Act are as follows:

> "***38A(b)*** *"forest" means a track of land covered with trees, shrubs, bushes or woody vegetation whether of natural growth or planted by human agency, and existing or being maintained with or without human effort, or such tract of land on which such growth is likely to have an effect on the supply of timber, fuel, forest-produce, or grazing facilities, or on climate, stream-flow, protection of land from erosion, or other such matters and shall include-*
>
> *(i) land covered with stumps of trees of a forest;*
>
> *(ii) land which is part of a forest or was lying within a forest on the first day of July, 1962;*
>
> *(iii) such pasture land, water-logged or non-cultivable land, lying within, or adjacent to, a forest as may be declared to be a forest by the State Government.*
>
> ***38A(c)*** *"forest land" means a land covered by forest or intended to be utilized as a forest;"*

133. The definition of forest as contained in Section

38A(b), as noticed above, gives very wide definition of forest and giving restrictive meaning of forest in view of the wide definition given by the State legislature cannot be accepted. We, thus, are of the view that the interpretation of forest as given by the Division Bench in its judgment dated 11.11.2011 has to be approved and the restrictive definition as given by the Uttarakhand High Court in its judgment dated 26.6.2007 in M/s. Gupta Builders cannot be approved. We, thus, reject the submission of learned counsel for the petitioners to adopt a restrictive meaning of word 'forest'.

XIV. Whether Notification dated 10.02.1960 declares Roads as Protected Forest

134. Whether passing through the roads as notified by notification dated 10.02.1960 can be treated to be passing through a protected forest is the question to be answered. The notification which has been relied by learned Additional Advocate General is notification dated 10.02.1960. It is useful to extract the contents of the said notification:

"February 10, 1960

No.1115/XIV-331-50,-Whereas the Governor Uttar Pradesh, is of the opinion that the making of enquiry and record contemplated under sub-section(3) of section 29 of the Indian Forest Act 1927(Act no.XVI of 027), will occupy such length of time as in the meantime to endanger the rights of the State Government, now therefore, in exercise of the powers conferred by the proviso to the aforesaid sub-section and by the sub-section(1) of the said section, read with section 80-A of the aforesaid Act, the Governor of Uttar Pradesh is pleased to declare that pending such enquiry and record the provisions of Chapter IV of the said Act to be applicable to the lands specified in the schedule here to : A)

Schedule

District	**Serial No.**	**Name of Road,**	**Mileage to be declared as Reserved or Protected Forest**	**Description of boundary**					
			4	**4**					
			From	**To**					
			M	**fg**	**ft**	**M**	**fg**	**ft**	

				.	.		.	.	
1.Meerut	1.	Meerut-Baghpat Road	3	0	0	31	2	0	The boundary of the land has been demarcated on the ground by stone pillars
….	….	….	…	…	…	…		…	……

…… …… …… ……"

135. A perusal of the schedule indicates that in 48 Districts as they existed in 1960, different roads have been declared to be protected forests from mileage to mileage. A perusal of the schedule which is part of notification issued by the State of U.P. indicates that in the various roads mentioned in the Schedule National highways are also included.

136. For finding the consequences of notification dated 10.02.1960 proviso to the sub-section (3) of Section 29 read with Section 80A, referred in the notification needs to be looked into. Section 29 contained in Chapter IV (deals with protected forests) is quoted below:

> *"**29. Protected Forests.-**(1) The [State Government] may, by notification in the [official gazette], declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest but which is the property of the Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitle.*
> *(2) The forest-land and waste-lands comprised in any such notification shall be called a "protected forest".*
> *(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the [State government] thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved.*
>
> *Provided that, if, in the case of any forest-land or waste land, the [State Government] thinks that such inquiry and record are necessary, but that*

> *they will occupy such length of time as in the meantime to endanger the rights of Government, the [State Government] may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities."*

137. Section 80A which has been referred in the notification is a provision which has been inserted by U.P. Act 18 of 1951 with effect from 06.10.1951. Section 80A is as follows:

> *"**80A.** The State Government may, by notification in the Official Gazette, declare that any of the provisions of or under this Act, shall apply to all or any land on the banks of canals or the sides of roads which are the property of the State Government or a local authority, and thereupon such provisions shall apply accordingly."*

138. Under Section 80A the State Government may, by notification declare that any of the provisions of Act shall apply on the **banks of canals or the sides of roads** which are the property of the State Government or a local authority. Section 80A is included in Chapter XIII which is a miscellaneous Chapter. Section 80A empowers the

State to declare any land on the **banks of canals or the sides of roads** as protected forest on which any other provisions of the Act can be applied. Notification dated 10.02.1960 declared that provisions of Chapter IV of the Act shall be applied. Thus land mentioned in the schedule is declared as protected forest.

139. Section 80A delineates the legislative scheme of declaring protected forests of **banks of canals or the sides of roads**. The State while issuing notification under Section 80A can only effectuate, the object and purpose of Section 80A as enacted by the State legislature.

140. The notification dated 10.02.1960 has to be read in the light of the substantive provisions contained under Section 80A. When Section 80A empowers the State to declare any land on the **banks of canals or the sides of roads** as protected forests State can do only which is permitted by the State and no more. Section 80A read with notification dated 10.02.1960 shall only mean that both the sides of the roads which have been mentioned in the Schedule are now declared protected forests. The

purpose for such declaration is not far to seek. Both sides of canals or both sides of the roads can be declared as protected forests for maintenance and management of the same by applying the different provisions of the Act. Maintenance of forests on both sides of canals is with the object and purpose of environment protection. Maintenance of protected forests on both the sides of the road is for the same purpose and object, and also with object to combat the vehicular pollution and to improve the environment and ecology. By notification under Section 80A, it cannot be accepted that road itself has been declared as protected forest. The object is not to declare the road as protected forest so as to apply different provisions of 1927 Act on the roads itself. The interpretation put by the State that roads declared by notification dated 10.02.1960 have become protected forests is not compatible with provisions of Chapter IV. The State cannot exercise its power under Section 30 nor any Rules under Section 32 can be framed by the State for the roads itself. The maintenance and regulation of

roads are governed by different statutes and principles of law. We, thus, reject the submissions of learned counsel for the the State that merely because both sides of roads are declared protected forests, the roads itself have become protected forests. We, thus, conclude that merely passing through the roads as included in the notification dated 10.02.1960, it cannot be held that the goods or forest produce are passing through the protected forests.

XV. <u>Whether Rule 3 is independent of Rule 5</u>

141. Rule 3 is couched in negative term providing that "……no forest produce shall be moved into or from or within the State of Uttar Pradesh except as hereinafter provided without a transit Pass in the form in Schedule A……". Thus transit of forest produce is permissible only with a transit pass. Rule 4(1) contains provisions regarding officers and persons who issue passes. Rule 4(1) is as follows:

Officers and Persons to issue passes	*"Rule 4.(1):The following officers and persons shall have power to issue passes under these rules:-*

(a) For forest produce belongings to Government or not owned by any other person, the Conservator of Forest, the Divisional Forest Officer, the Sub-Divisional Forest Officer or any other officer authorized in this behalf in writing by conservator of Forest or the Divisional Forest Officer;

(b) For forest produce owned by any person, such person or his agent if so authorized in writing by the Divisional Forest Officer-

(i) Provided that any person who desires to obtain a transit pass or authorization to issue passes under clause (b) of sub-rule(1) above shall apply in the form in Schedule 'B' and the Divisional Forest Officer may, before issuing the transit pass or authorization to issue such passes, conduct such inquiry and call for such information as considered necessary;

(ii)Such authorization shall specify the period during which it shall remain in force, and shall also specify the route to be adopted and check Chawki or depot through which to produce must pass; and

(iii)Any authorization may at any time be changed (on request or otherwise) or cancelled by the Division Forest Officer or Conservation of Forests."

142. Now we come to Rule (5) which provides for fees payable for different passes. Rule 5 along with its

Marginal note (as originally framed) is as follows:

Fees Payable for different classes of passes	*5. At the check Chawki or depot established under rule 15 and specified under proviso (ii) to clause(b), sub-rule (1) of rule 4, the forest produce along-with the two copies of the pass(duplicate and triplicate) shall be produced for examination under sub-rule(4) of rule 6 and for payment of transit fee on the forest produce calculated at the following rates; corresponding receipt shall be granted in the form given in Schedule C-* *(i) per lorry load of timber or other forest produce ……Rs.5.00 per tonne of capacity* *(ii) per cart load of timber or other forest produce ……Rs. 2.50* *(iii) per camel load of timber or other forest produce ……Rs.1.25* *(iv) per pony load of timber or other forest produce ……Rs.0.50* *(v) per head load of timber or other forest produce ……Rs. 0.25"*

143. Referring to Chawki or depot established under Rule 15 and specified under proviso(ii) to clause(b), sub-rule (1) of Rule 4, learned counsel contends that transit passes as referred to under proviso (ii) to clause(b) of sub-rule (1) of Rule 4 are only to be charged with transit fees.

144. Rule 4 as noticed above contains provisions

regarding officers and persons who have power to issue passes. Under Rule 4(1)(a) for the forest produce belonging to government or not owned by any other person various officers of the forest department are authorized to issue passes. Rule 4 clause (b) relates to various produce own by any person. Pass can be issued by such persons or his agents if so authorized in writing by the Divisional Forest Officer. Any person who is referred to in Rule 4(b) has to apply in the form in Schedule B to the Divisional Forest Officer whereon authorization has to be issued by the authorized Divisional officer. The words in Rule 5 namely "…Chawki or depot established under Rule 15 and specified under proviso(ii) to clause(b), sub-rule (1) of Rule 4" are the words qualifying the words chawki or depots. The fee has to be paid for different passes at chawki or depot where it shall be produced for examination and payment of transit fees. All forest produces are to be produced at chawki or depot for payment of transit fee. Reading of Rule 5 does not indicate any intention that only one category of passes as referred to in Rule 4(1)(b) are leviable with

transit fee. The words"…specified under proviso(ii) to clause(b), sub-rule(1) of Rule 4 only refer to check Chawki or depot where forest produce is to be produced for examination. The Marginal Note of Rule 5 also clarifies the intent of the Rule. The Marginal note reads as "Fees payable for different classes of passes." Thus Marginal Note clarifies that transit fee is payable at all kinds of passes and submission is incorrect that leviablity of fee is only on one category of passes as referred to in Rule 4(1)(b). Marginal note has been held to be an internal aid to statutory interpretation of a statute. Justice G.P.Singh in Principles of Statutory interpretation 14th Edition regarding marginal note states as follows:

> *"...Marginal notes appended to Articles of the Constitution have been held to constitute part of the Constitution as passed by the Constituent Assembly and therefore they have been made use of in construing the Articles, e.g. Article 286, as furnishing 'prima facie', 'some clue as to the meaning and purpose of the Article'.*
>
> *A note appended to a statutory provision or subordinate legislation is merely explanatory in nature and does not*

> *dilute the rigour of the main provision. Notes under the rules cannot control the rules but they can provide an aid for interpretation of those rules. Further, a note which is made contemporaneously with the rules is part of the rule, and is not inconsistent with the rule, but makes explicit what is implicit in the rule."*

145. This Court has also occasion to consider the value of marginal note in several cases. In ***2004 (2) SCC 579, N.C.Dhoundial versus Union of India & Ors.,*** It was laid down in paragraph 15 that heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to listen the legislative intent. Following was laid down in para 15:

> *"**15....**The language employed in the marginal heading is another indicator that it is a jurisdictional limitation. It is a settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent (vide Uttam Das Chela Sunder Das v. Shiromani Gurdwara Parbandhak Committee and Bhinka v. Charan Singh)."*

146. In event the interpretation as put by learned counsel for the petitioner is accepted that fee under Rule 5 is chargeable only on passes obtained under Rule

4(1)(b) only, the easiest manner to avoid payment of transit fee is not to apply in form B for obtaining the booklet for issuance of pass by the person or from its authorized representative, which cannot be the intent of the Rule. Rule 4 is a rule made with regard to the persons and officers who have power to issue passes that has nothing to do with payment of fee which is separately provided in Rule 5 and is applicable to all kinds of passes.

147. Rule 6(4) on which also emphasis has been given by learned counsel for the petitioner only provides that the first copy of the triplicate forms of pass shall form the counterfoil and second and third parts shall be given to the person in-charge of the produce under transit and shall be produced whenever required by any checking officer. Schedule A which is appended to the Rules also use the word counterfoil and all passes are to be issued in form A as required by Rule 3 as well as Rule 6(1). When all transit passes have to be in same form and in triplicate we fail to see that how it can be read that only on one category of passes fee is leviable and Rule 5

is not applicable and is completely independent of Rule 3.

148. We thus are of the view that the submissions of learned counsel of the petitioner that transit fee is payable only with regard to passes issued under Rule 4(1)(b) which are required to be checked under Rule 6(4), cannot be accepted. Pay ability of transit fee is attached with transit pass issued under form A except in cases where no transit pass is required for the removal of forest produce as enumerated in proviso to Rule 3. We thus do not accept the interpretation of Rule 3, 4, 5 & 6 as contended by learned counsel for the petitioner in respect of pay ability of transit fee on transit passes issued under 1978 Rules.

XVI. Non-issuance of Section 20 Notification after Section 4 Notification of 1927 Act

149. At this juncture, it is also necessary to notice one submission raised by the learned counsel for the petitioners. It is contended that the State of Uttar Pradesh although issued notification under Section 4 of 1927 Act proposing to constitute a land as forest but no

final notification having been issued under Section 20 of 1927 Act the land covered by a notification issued under Section 4 cannot be regarded as forest so as to levy transit fee on the forest produce transiting through that area. With reference to above submission, it is sufficient to notice Section 5 as inserted by Uttar Pradesh Act 23 of 1965 with effect from 25.11.1965. By the aforesaid U.P. Act 23 of 1965 Section 5 has been substituted to the following effect:

> *"Section 5. Bar of accrual of forest rights.- After the issue of the notification under section 4 no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or a contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land, nor any tree therein felled, girdled, lopped, tapped, or burnt, or its bark or leaves stripped off, or the same otherwise damaged, nor any forest-produce removed therefrom, except in accordance with such rules as may be made by the State Government in this behalf."*

150. Section 5 clearly provides that after the issue of the notification under Section 4 no forest produce can be removed therefrom, except in accordance with such rules as may be made by the State Government in this behalf. The regulation by the State thus comes into operation after the issue of notification under Section 4 and thus the submission of the petitioners that since no final notification under Section 20 has been issued they can not be regulated by Rules 1978 cannot be accepted.

151. We, however, make it clear that we have not entered into the issue as to whether actually after Section 4 notification State has taken any further steps including notification under Section 20 or not.

152. In so far as submission of learned counsel for the writ petitioner that Constitution Bench judgment in State of ***West Bengal vs. Keshoram Industries (surpa)*** having been referred to a Nine Judge Bench which reference having not been answered, the interpretation given by the Five Judge Bench of ***Synthetics and Chemicals vs. State of U. P. and ors*** cannot be relied, suffice it to say for the purposes of this batch of cases it is not necessary for

us to rest our decision on the preposition as laid down in ***Keshoram Industries.*** Independent of preposition as laid down by the Constitution Bench in ***Keshoram Industries*** there are clear pronouncement of this court as noticed above by us for deciding the issues raised in this batch of cases.

153. The writ petitioners have contended that in view of striking down Fourth and Fifth Amendment Rules to 1978 Rules, the Third Amendment dated 09.09.2004 could not have been resorted to for realising the transit fee at the rate of Rs.38/-. The petitioners relying on judgments of ***Firm A.T.B Mehtab Majid and Co. vs. State of Madras and another, AIR 1963 SC 928; B.N. Tiwari vs. Union of India, AIR 1965 SC 1430 and State of U.P. and others vs. Hirendera Pal Singh, 2011 (5) SCC 305,*** have submitted that the earlier Rule does not revive even when substituted Rule is struck down by the Court. Shri D.K. Singh, learned Additional Advocate General has refuted the submission and placed reliance on judgment of this Court in ***Supreme Court Advocate-on-record Association vs. Union of India, 2016(5)SCC 1.*** This Court in the interim

order dated 29.10.2013 has expressly directed that "the State shall be free to recover transit fee for forest produce removed from within the State of U.P. at the rate stipulated in the Third amendment to the Rules mentioned in the earlier part of this order." Further, after noticing the striking down of Fourth and Fifth Amendment Rules by the High Court, this Court in the same interim order permitted the State to recover transit fee in terms of the Third Amendment Rules.

154. It is, further, relevant to note that the High Court in its judgment dated 11.11.2011 has issued following directions in the last paragraph of the judgment which contained operative portion as below:

> *"188. All the writ petitions are consequently allowed. The Notifications dated 20.10.2010, by which the 'U.P. Transport of Timber and Other Forest Produce Rules, 1978', was amended by the 4th Amendment; and the Notification dated 4.6.2011, by which the 'U.P. Transport of Timber and Other Forest Produce Rules, 1978' was amended by the 5th Amendment, are quashed. It will be open to the Respondents to impose and collect the transit fees on such forest produce prevailing on such rates as it was being charged prior to the 4th Amendment to the Rules notified on 20.10.2010, i.e. at the rate of Rs.38/- per tonne of capacity per lorry load of timber or other*

forest produce; Rs. 19/- per tonne of capacity per cart load of timber or other forest produce; Rs. 1.25 per camel load of timber and other forest produce; Rs.4/- per pony load of timber or other forest produce and Rs.2/- per head load of timber or other forest produce. We also declare that the imposition of transit fee on 'Sponge Iron' which is not a forest produce after undergoing the process of manufacture, converting it into a commercially different commodity than forest produce, and 'Tendu Patta', the trade and transportation of which is monopolized by the State Government, is not valid in law, and restrain Respondents from requiring transit passes and transit fees on it. The costs are made easy.
Petitions allowed.

155. The High Court has thus even though had struck down Fourth and Fifth Amendment Rules but has clearly permitted the State to recover transit fee in accordance with the rate as was applicable prior to Fourth Amendment Rules. We, thus, do not find any infirmity in the State's recovery of transit fee at the rate of Third Amendment Rules. There being express order by the High Court on 11.11.2011 as well as interim order by this Court on 29.10.2013 permitting the State to recover transit fee as per the rate as was prevalent by Third Amendment Rules prior to enforcement to Fourth Amendment Rules, we are of the view that the question as to whether by striking

down Fourth and Fifth Amendment Rules, Third Amendment Rule does not revive need not be gone into in the present case. In view of the order of the Division Bench of the High dated 11.11.2011, the State was fully competent to recover the transit fee as per Third Amendment Rule, which direction of the High Court we duly affirm.

XVII. VALIDITY OF FOURTH AND FIFTH AMENDMENT RULES

156. We now proceed to consider the respective contentions of the parties on the Fourth and Fifth Amendment Rules. Before we proceed to consider the rival contentions, it is necessary to have broad over-view of the concept of fee and tax. Further, the nature of regulatory fee and its essential characteristic also needs to be looked into.

157. The *locus classicus* on the concept of fee and tax is the judgment of this Court in ***The Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282,*** B.K. Mukherjea, J. speaking for 7-Judge Bench has elaborately defined the tax and fee in paragraphs 43 and 44 which are

quoted below:

> "43. A neat definition of what "tax" means has been given by Latham C.J. of the High Court of Australia in Matthews v. Chicory Marketing Board (60 C.L.R. 263, 276.).
>
> > *"A tax", according to the learned Chief Justice, "is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered".*
>
> *This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law (Vide Lower Mainland Dairy v. Orystal Dairy Ltd. 1933 AC 168.).*
>
> *The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected form part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the taxpayer and the public authority (See Findlay Shirras on "Science of Public Finance", Vol. p. 203.). Another feature of taxation is that as it is a part of the common burden, the quantum of*

imposition upon the taxpayer depends generally upon his capacity to pay.

44. Coming now to fees, a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay (Vide Lutz on "Public Finance" p. 215.). These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases."

158. Further, on distinction between tax and fee following was stated in paragraphs 45 and 46:

"45...The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest (Vide Findlay Shirras on "Science of Public Finance" Vol. I, p. 202.). Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives. As Seligman says, it is the

special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action (Vide Seligman's Essays on Taxation, p. 408.).

46. If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision, be co-related to the expenses incurred by Government in rendering the services. As indicated in article 110 of the Constitution, ordinarily there are two classes of cases where Government imposes 'fees' upon persons. In the first class of cases, Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred.

A most common illustration of this type of cases is furnished by the licence fees for motor vehicles. Here the costs incurred by the Government in maintaining an office or bureau for the granting of licences may be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, according to all the writers on public finance, the tax element is predominant (Vide Seligman's Essays on Taxation, p. 409.), and if the money paid by licence holders goes for the upkeep of roads and other matters of general public utility, the licence fee cannot but be regard as a tax."

159. In another Constitution Bench in ***Corporation of Calcutta and Anr. vs. Liberty Cinema, AIR 1965 SC 1107,*** following was stated in paragraphs 16 and 17:

> *"16. Both these cases discussed other tests besides the requirement of the rendering of services for determining whether a levy is a fee, but with these we are not concerned in the present case. These cases also discussed the correlation of the costs of the services to the levy but with also we are not concerned as it is not sought to uphold the present levy on the ground of such correlation. We have referred to these cases only for showing that to make a levy a fee the services rendered in respect of it must benefit, or confer advantage on, the person who pays the levy.*
>
> *20. The other case to which we wish to refer in this connection is The Hingir-Rampur Coal Co., Ltd. v. The State of Orissa and ors., [1961]2SCR537 . There the imposition by a certain statute of a levy on lessees of coal mines in a certain area and the creation of a fund with it, was called in question. It was held that the levy was a fee in return for services and was valid. It was there said at p. 549, "If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area, the fact that in benefiting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee." It may be mentioned that the levy there went to meet expenditure necessary or expedient for providing*

amenities like communication, water supply and electricity for the better development of the mining area and to meet the welfare of the labour employed and other persons residing or working in the area of the mines. Here again there is no element of control but the services resulted in real benefit specially accruing to the persons on whom the levy was imposed. These decisions of this Court clearly establish that in order to make a levy a fee for services rendered the levy must confer special benefit on the persons on whom it is imposed. No case has been brought to our notice in which it has been held that a mere control exercised on the activities of the persons on whom the levy is imposed so as to make these activities more onerous, is service rendered to them making the levy a fee."

160. The nature of transit fee came for consideration before this Court in ***State of Tripura and others vs. Sudhir Ranjan Nath, 1997 (3) SCC 665.*** The Tripura Transit Rules levy the transit fee. The High Court has declared Rule 3 which provided for charging of transit fee as unconstitutional. In appeal against the said judgment, referring to the judgment of the ***Corporation of Calcutta and Anr. vs. Liberty Cinema (supra)*** it was held that expression 'licence fee' does not necessarily mean a fee in lieu of services and that in the case of regulatory

fees, no *quid pro quo* need be established. Following was held in paragraph 15:

> *"**15.** This decision has been followed in several decisions, including the recent decisions of this Court in Vam Organic Chemicals Ltd. v. State of U.P., 1997 (2) SCC 715 and Bihar Distillery v. Union of India, 1997 (2) SCC 727. The High Court was, therefore, not right in proceeding on the assumption that every fee must necessarily satisfy the test of quid pro quo and in declaring the fees levied by sub-rules (3) and (4) of Rule 3 as bad on that basis. Since we hold that the fees levied by the said sub-rules is regulatory in nature, the said levy must be held to be valid and competent, being fully warranted by Section 41."*

161. This Court held that transit fee is a regulatory fee in nature.

162. In ***Secunderabad Hyderabad Hotel Owners' Assn. v. Hyderabad Municipal Corpn., 1999 (2) SCC 274,*** where this Court held that a fee which is charged for regulation for such activity would be validly classified as a fee and not a tax although no service is rendered. In paragraph 9 following was stated:

> *"**9.** It is, by now, well settled that a licence fee may be either regulatory or*

> *compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive."*

163. The Uttar Pradesh Transit of Timber and other Forest Produce Rules, 1978, itself came for consideration before this Court in ***State of U.P. vs. Sitapur Packing Wood Suppliers, 2002 (4) SCC 566.*** The High Court had held the Rules to be constitutionally valid but levy of transit fee was invalidated. In absence of *quid pro quo*, the High Court did not strike down the Rules and observe that it is open to the State Government to levy transit fee by rendering service as *quid pro quo*. Rules 3 and 5 of 1978 Rules as well as provisions of Section 41 of Forest Act, 1927 were considered by this Court. This

Court relying on the judgments of this Court in ***State of Tripura v. Sudhir Ranjan Nath, Corpn. of Calcutta v. Liberty Cinema and Secunderabad Hyderabad Hotel Owners' Assn. v. Hyderabad Municipal Corpn.*** held transit fee under Rule 5 as clearly regulatory and it was held that it was not necessary for the State to establish *quid pro quo*. Following was held in paragraphs 8,9 and 10:

> *"**8.** The distinction between tax and fee is well settled and need not be restated herein. It is clear from the afore-noticed provisions of the Act and the Rules that the transitory fee is regulatory in nature. The question of quid pro quo is necessary when a fee is compensatory. It is well established that for every fee quid pro quo is not necessary. The transit fee being regulatory, it is not necessary to establish the factum of rendering of service. Thus, there is no question of a levy of transit fee being invalidated on the ground that quid pro quo has not been established.*
>
> ***9.** In State of Tripura v. Sudhir Ranjan Nath almost similar question came up for consideration in relation to the State of Tripura. It was held that Sections 41 and 76 of the Act vest total control over the forest produce in the State Government and empower it to regulate the transit of all timber or other forest produce for which purpose the State Government is also empowered to make the Rules. The decision of the High Court invalidating the levy of application fee in the said case on the*

ground that the State had not established that the services were rendered in lieu of the said fee, was reversed by this Court holding that the fee was regulatory and not compensatory. Reference may be made to the decision in the case of Corpn. of Calcutta v. Liberty Cinema wherein it was held that the expression licence fee does not necessarily mean a fee in lieu of services and in case of regulatory fee no quid pro quo need be established. Following Liberty Cinema case[2] similar views have been expressed in Secunderabad Hyderabad Hotel Owners' Assn. v. Hyderabad Municipal Corpn. and P. Kannadasan v. State of T.N.

10. *The transit fee under Rule 5 is clearly regulatory and, thus, it was not necessary for the State to establish quid pro quo. The High Court was in error in holding that transit fee is invalid in absence of quid pro quo. As a consequence the penalty would also be valid. The penalty was held to be invalid by the High Court in view of its conclusion about the invalidity of the transit fee. The penalty, however, cannot be beyond what is permissible in the Act. That aspect, however, is not under challenge in these appeals as the State Government after the impugned judgment of the High Court realizing its mistake amended the Rule so as to bring the provision of penalty in accord with the provisions of the Act."*

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164. In view of the foregoing discussion, it is now well settled that transit fee charged under 1978 Rules is regulatory fee in character and further the State is not

to prove *quid pro quo* for levy of transit fee. After having noticed the nature and character of the transit fee as envisaged in 1978 Rules, we now proceed to notice various provisions of 1978 Rules as well as Fourth and Fifth Amendment Rules.

165. Section 41 of the Forest Act, 1927 empowered the State to make Rules to regulate transit of forest produce. The State of Uttar Pradesh by Uttar Pradesh Act 23 of 1965 with effect from 23.11.1965 after sub-section (2) of Section 41 inserted sub-sections (2A) and (2B). Sub-section (2A) is as follows:

> *"(2A) The State Government may by notification in the Gazette delegate, either unconditionally or subject to such conditions as may be specified in the notification, to any Forest-officer, not below the rank of Conservator, the power to prescribe fees under clause (c) of sub-section (2)."*

166. The State of U.P. in exercise of power under Section 41 framed Rules, namely, the Uttar Pradesh Transit of Timber and other Forest Produce Rules, 1978. Rule 3 provided for regulation of transit of forest-produce by means of passes which is to the following

effect:

> *"3. **Regulation of transit of forest produce by means of passes.** - No forest produce shall be moved into, or from, or within, the State of Uttar Pradesh except as hereinafter provided, without a transit pass in the form in Schedule A to these Rules, from an officer of the Forest Department or a person duly authorised by or under these Rules to issue such pass or otherwise than in accordance with the conditions of such pass or by any route or to any destination other than the route or destination specified in such pass :*
>
> *Provided that no transit pass hall be required for the removal-*
>
> *(iii) of any forest produce which is being removed for bona fide consumption by any person in exercise of a privilege granted in this behalf by the 'State Government' or of a right recognised under this Act, within the limits of a village in which it is produced;*
>
> *(iv) of forest produce by contractor's agency from the forests managed by the Forest Department, in which case the movement shall be regulated by the relevant conditions of sale and terms of the corresponding agreement deed executed by the buyer;*
>
> *(v) of such forest produce as may*

be exempted by the State Government from the operation of these rules by notification in the official Gazette."

167. Rule 5 prescribes for fees payable for different classes of passes. Rule 5(as originally framed) is as below:

*"**5. Fees payable for different classes of passes. -** At the Check Chowki or depot established under Rule 15 and specified under proviso (ii) to clause (b) of sub-rule (1) of Rule 4, the forest produce alongwith the two copies of the pass (duplicate and triplicate) shall be produced for examination under sub-rule (4) of Rule 6 and for payment of transit fee on the forest produce calculated at the following rates; corresponding receipt shall be granted in the form given in Schedule 'C'-*

(i)per lorry load of timber or other forest produce	.Rs. 5.00 per tonne of capacity
(ii)per cart load of timber or other forest produce	.Rs. 2.50
(iii)per camel load of timber or other forest produce	.Rs. 1.25
(iv)per pony load of	.Re. 0.50

	timber or other forest produce	
(v)	per head load of timber or other forest produce	.Re. 0.25

Note. - In respect of resin and resin products, the provisions of the Uttar Pradesh Resin and Other Forest Produce (Regulation of Trade) Act, 1976 and the rules framed thereunder, shall apply."

168. By the Uttar Pradesh Transit of Timber and other Forest Produce (Third Amendment) Rules, 2004 fee prescribed in Rule 5 was increased, for example per lorry load of timber or other forest produce in place of Rs.5/- per tonne of capacity is shown fee of Rs.38/- per tonne of capacity. Now, comes to Fourth Amendment Rules, 2010 dated 20.10.2010, the fee which was Rs.38/- for per tonne per lorry load of timber or other forest produce was increased as Rs.200/- per cubic meter of capacity other than of Khair, Sal and Sagaun (Teak), Shisham, Sandal Wood and Red Sanders. Then comes to Fifth Amendment Rules,2011 dated 04.06.2011. Rule 5 was amended where the basis of levy of fee was changed into *advalorem* at the

rate of 5% or minimum Rs.2,000/- for per lorry load of timber or other than of Khair, Sal and Sagaun (Teak), Shisham, Sandal Wood and Red Sanders. Relevant extract of Rule 5 as amended by Fifth Amendment is as follows:

(i)(a) per lorry load of timber other than of Khair, Sal and Sagaun (Teak) Shisham, Sandal Wood and Red Sanders	**Rs.200.00 per cubic Meter of capacity**	**(i)(a) per lorry load or timber of Khair, Sal and Sagaun (Teak) Shisham,Sandal Wood and Red Sanders**	**Advalorem at the rate of 5% or minimum Rs.2000/-**
(b)per lorry load of timber other than of Khair, Sal and Sagaun (Teak), Shisham, Sandal Wood and Red Sanders or other forest produce	**Rs.75.00 per cubic Meter of capacity**	**(b) per lorry load of timber other than of Khair, Sal and Sagaun (Teak), Shisham,Sandal Wood and Red Sanders or other forest produce except as mentioned in (i)c)**	**Advalorem at the rate of 5% or minimum Rs.750.**
		(c)per lorry load of other forest produce coming from mines, e.g., coal, lime, stone, sand, Bajari, and other	**Advalorem at the rate of 15% of minimum Rs.400/-**

		minerals.	

169. Before we proceed further with the discussion it is necessary to note the actual impact on Transit Fee of Fourth and Fifth Amendment Rules. We have already noted that initially when Transit Fee Rules were framed in 1978, Transit Fee on per lorry load of timber was Rs. 5 per tonne of capacity. By 3rd amendment with effect from 14.06.2004 Rs. 5/- was increased as Rs. 38 per tonne of capacity. By 4th amendment rules, the Transit Fee was increased as Rs. 200/- per cubic meter with regard to timber, Khair, Sal & Sagaun, Sisham, Sandal wood and Red Sanders and with regard to other timber Rs. 75 per cubic meter. 170. The same amount was leviable on other forest produce. The chart has been given by learned Counsel for the petitioners reflecting the effect of Third, Fourth & Fifth Amendment Rules with regard to a lorry load having different capacities. The chart is as follows:

TRANSIT FEE CHARGED

Vehicles	As per 1978 Rules Rs. 5/- per	As per G.O. Dt. 16.04.2004 Rs. 38/- per	As per G. O. dt. 20.10.2010 (a) Rs. 200/- per Cubic Meter Capacity	As per G. O. Dt. 04.06.2011	

	Ton	Ton	(b)Rs. 75/- Per Cubic Meter capacity		
6 wheeler	9 Ton x Rs. 5/- = Rs. 45/-	9 Ton x Rs. 38/- = Rs. 342/-	(a) 28.57 Cubic Meter x Rs. 200/- = Rs. 5714/-	(a) Per Lorry load of timber of Khair, Sal and Sagaun (Teek), Shisham, Sandal wood and Red Sandaers	Ad-Valorem at the rate of 5% or minimum Rs. 2000/-
10-12 wheeler	15 Ton X Rs. 5/- = Rs. 75/-	15 Ton x Rs. 38/- = Rs. 570/-	36.50 Cubic Meter x Rs. 200/- = Rs. 7300/-	(b) Per lorry load of timber other than of Khair, Sal and Sagaun (Teek), Shisham, Sandal wood and Red Sanders and other forest produce as mentioned in (i) (c)	Ad-valorem at the rate of 5% or minimum Rs. 750/-
6 wheeler			(b) 28.57 Cubic Meter x Rs. 75/- = Rs. 2142/-	(c) Per lorry load of other forest produce coming from mines i.e. coal, lime, stone, sand, bajri and other minerals.	Ad-Valorem at the rate of 15% or minimum Rs. 750/-
10-12 wheeler			36.50 Cubic Meter x Rs. 75/- = Rs. 2737/-		

171. The above chart indicates that by Third Amendment Rules which was enforced from 14.06.2004 that is after 26 years of enforcement of Transit Rule, the Transit Fee was increased 7 times. Whereas by Fourth amendment which was imposed with effect from 20.10.2010. Transit Fee was increased more than 16 times. As per Fifth amendment rules, Transit Fee was based on *ad-valorem* basis and although the minimum amount was fixed but there was no cap on the maximum amount. Thus Transit Fee payable was on the value of all forest produce. Whereas with regard to timber *ad-valorem* was at the rate of 5 per cent but with regard to coal, lime stone, sand, stone, bajri & other minerals ad-valorem is at the rate of 15 per cent.

172. High Court after considering the impact of Fifth Amendment has held that by Fifth Amendment the increase in Transit Fee is more than ten time. The Fifth Amendment Rule was issued in six months of issuance of Fourth Amendment Rule. In the affidavit filed before the High Court the State has pleaded that every year expenditure increases 10% to 20%, When every year expenditure increases only 10 to 20%, what was necessity to increase

the transit several time fee by 5th Amendment, remains unexplained.

173. Learned senior counsel **Shri N. K. Kaul** appearing for the respondent, Indian Wood Products Co. has explained the impact of increase of Transit Fee on the basis of *ad-valorem*. According to the chart in so far as the Transit Fee on Khair wood as paid by Indian Wood Products Ltd, the payment was made 96.38 times by 4th amendment and 362.33 times from 3rd amendment on the basis of 5th amendment of the Rules dated 04.06.2011.

174. Before we arrive at any conclusion regarding validity or otherwise of the Fourth and Fifth Amendment Rules following three issues need to be addressed:

(a) Whether there is a broad correlation between increase in the fee and expenses incurred in regulation of forest produce, although the State is not liable to prove any quid pro quo?

(b) Whether the State has satisfactorily justified the increase in Transit Fee by 4th & 5th amendment by producing relevant material?

(c) Whether by adoption of *ad-valorem* basis by 5th

amendment Rules the Transit Fee no longer remains a fee and has changed into character of a tax?

175. We have already noticed the pronouncement of this Court that for regulatory fee, State is not to prove any quid pro quo. Regulatory Fee can be charged, even if, no services are rendered by the State in lieu of fee realised. This Court in few more cases had occasion to advert to the aforesaid issue which need to be noted. In The State of Maharashtra and Others vs. Salvation Army, Western India Territory, (1975) 1 SCC 509, this Court had occasion to consider the provisions of Bombay Public Trust Act, 1950 wherein, two per cent contribution was required to be paid to Public Trust Administration Fund. This Court noticed the essential elements to characterise the payment as a fee. In para 14 following was stated:

> *"14...Thus, two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accept either willingly or unwillingly and in the second place, the amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenue of the state to be spent for general public*

purposes."

176. Another case which needs to be noted is ***Sreenivasa General Traders and Others vs. State of Andhra Pradesh and Others, (1983) 4 SCC 353.*** In this case, the Court after referring to earlier judgments of this Court laid down the following in para 31:

> *"31.The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of on consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlationship between the levy and the services rendered (sic or) expected is one of general*

> *character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee, and the service rendered..."*

177. In ***Delhi Race Club Limited vs. Union of India and Others, (2012) 8 SCC 680,*** following was laid down in para 39 and 43:

> *"39. Dealing with such regulatory fees, this Court in Vam Organic Chemicals Ltd. & Anr. Vs. State of U.P. observed that in case of a regulatory fee, like the licence fee, no quid pro quo is necessary, but such fee should not be excessive..."*
>
> *"43...Hence, in our opinion, the licence fee imposed in the present case is a regulatory fee and need not necessarily entail rendition of specific services in return but at the same time should not be excessive. In any case, the appellant has not challenged the amount of the levy as unreasonable and expropriatory or excessive..."*

178. Thus the issue (a) as noted above, has to be answered holding that although, the State is not required to prove any quid pro quo for levy or increase in fee but a broad correlation has to be established between expenses incurred for regulation of Transit and the fee realised.

179. The issue (b) that whether State has satisfactorily justified the increase in Transit Fee by Fourth and Fifth Amendment Rules by producing any material has to be answered on the basis of material which has been produced by the State before the High Court and has been adverted to before us by learned senior counsel Shri Ravindra Srivastava. The submission of learned counsel for the State is that the High Court has not adverted to the relevant material produced by the State which was filed before the Court by means of a counter affidavit. The above submission is not correct since in para 85 of the judgment, the High Court has noticed the figures which were placed by the State in its affidavit regarding amount of collection of Transit Fee and the expenses incurred by the State on the establishment and other miscellaneous expenses. The following chart of expenses and Transit Fee and the cost of enforcement by Forest Department has been noticed by the High Court in para 85 which is to the following effect:

वन उपज अभिवहन से प्राप्त राजस्व तथा इससे प्राप्त करने हेतु प्रवर्तन पर किया गया व्यय		
वर्ष	वन उपज अभिवहन से	वन विभाग प्रवर्तन पर किया गया व्यय

	प्राप्त राजस्व (रूपये लाख में)				
		अधिष्ठान	अन्य	अनुसांगिक व्यय	योग
2	3	4	5	6	7
2004-05	3867.00	10997.33	15.37	201.33	11213.93
2009-10	9086.17	27684.38	15.61	238.73	27938.72
2010-11	11288.2	31786.85	31.09	387.22	32205.16
2011-12 (Upto July 2011	3848.33	11338.75	2.94	41.89	11383.58

180. Learned counsel appearing for the writ petitioners with regard to above collection and expenses has submitted that by collection of Transit Fee State was trying to meet the entire expenses of Forest Department and the expenses of entire establishment and no details were given of expenses incurred for regulation of Transit Fee separately. It is submitted that Transit Fee is not the only source of Forest Department to meet the expenses of entire establishment of the Forest Department.

181. Shri Udit Chandra, learned counsel appearing for some of the petitioners has referred to a Division Bench judgment of Allahabad High Court in ***Civil Misc.Writ Petition No.72465 of 2011-M/s. Singh Timber Trader and others vs. State of U.P. and others (reported in 2016(1)***

Allahabad Daily Judgment 174). It is submitted that the writ petitioners in the above case, the manufacturers of plywood and veneer prayed for quashing of the notification dated 20.10.2010 by which Rule 11 of the U.P. Establishment and Regulation of Saw Mills Rules, 1978 had been substituted by U.P. Establishment and Regulation of Saw Mills (Fourth Amendment) Rules, 2010. By the said Fourth Amendment, Rules, 2010 licence fee for Saw Mills had been enhanced by 15 times from Rs.5,000/- per year to Rs.75,000/- per year. What is submitted is that the State in the said writ petition for justifying the enhancement of licence fee for Saw Mills has relied on the same figures of expenditure on enforcement/regulation in U.P. Forest Department which has been relied in the High Court in the impugned judgment in support of increase in the transit fee. It is submitted that thus the figures of expenditure which are claimed by the State are not clearly figures of expenditure on regulation of transit but include other expenditures of the forest department also. It is useful to extract the following portion of the above mentioned

Division Bench judgment dated 23rd December, 2014:

> *"The State Government in the counter affidavit has tried to justify the enhancement in the fee in the following manner.*
>
> *(a) Expenditure on enforcement/ regulation in U.P. Forest Department has increased about three times i.e. from Rs.11213.93 lakh in year 2004-05 to 32205.16 lakh in year 2010-11.*

Year	**Expenditure on regulation (Rupees in Lakh)**			
	Establish -ment	**Other**	**Incidental expenditure**	**Total**
2004-05	10997.33	15.37	201.33	11213.93
2009-10	27684.38	15.61	238.73	27938.72
2010-11	31786.85	31.09	387.22	32205.16

> The license fee/renewal of saw mills and veneer/plywood are thus regulatory in nature and the same has been enhanced with a view to balance and meet the enhanced expenditure being incurred on enforcement/regulation of the Forest Department.."

182. From the above it is clear that the submission of learned counsel for writ petitioners is correct that the expenditure which is claimed by the State as noticed in paragraph 85 of the impugned judgment of the High Court is the expenditure not confined to regulation of transit

but other expenditures of the forest department as well. Thus, the correlation sought to be established by the State on account of transit fee raised and those expenditures as claimed is unfounded and has rightly not been accepted by the High Court.

183. The High Court after considering the stand of the State has held the following in paragraphs 141 and 142:

> *"141....The increase of the transit fees by the 4th Amendment on cubic feet basis and thereafter by impugned 5th Amendment on ad valorem basis on movement of forest produce on the ground that the value of the forest produce has increased, has made it unconstitutional on both the counts namely that the cost of forest produce has no co-relation with the objects sought to be achieved by regulation of transit, and secondly the State has not justified the increase on any empirical data based on scientific evaluation of the cost of regulation. The fee has thus changed its character from regulatory fee, and in the absence of any defence on quid pro quo, to a compensatory tax, which has the effect of augmenting the revenue of the State.*
>
> *142. In our opinion, considering the arguments raised and the material placed before us, even if the Rules of 1978 are valid, the notifications dated 13.12.2010, dated 4th June, 2011 under challenge, increasing the transit fees firstly on cubic feet basis and thereafter item wise on ad valorem basis linked to the price by making*

distinction between the forest produce, and the minor minerals, which are also forest produce, and without providing justification for such increase, converted the regulatory fees into compensatory tax. The State has completely failed to justify, such arbitrary increase, both on the principle of reasonableness and in public interest."

184. The aforesaid figures, as noticed in paragraph 85, were expressly considered by the High Court in para 181 of the judgment where following observation has been made:

"181....The collections in 2010-11, before the 4th and 5th Amendments to the Rules of 1978 was 11288. 2 lacs, whereas the expenditure of the establishment and other administrative expenses on the enforcement for the entire year 2010-11 on the collection of transit fees by the department was 32205.16 lacs. It is likely to 128 increase, as admitted by only 10-20% every year. The revenue to be generated by the transit fee, would thus be at least 10 times more than the cost in collection of fees. By any conservative estimate the increase of fees on ad valorem basis, would be far above the entire expenses born by the department for enforcement on collection of the fees, and thus the large amount of the collection of transit fees will go into the coffers of the State to raise its revenues. Even if entire collections are spent on maintenance of staff, vehicles, fuel and other administrative expenses of forest department, it looses its character as

> *regulatory fees, to regulate transit of forest produce, with no benefit or service directly or indirectly to facilitate the trade or transit of forest produce. There is no averment, nor it is argued by learned Counsel appearing for the State that any facility or services are to be provided or are contemplated for the trade."*

185. The High Court thus held, after considering the material brought by the State for increase transit fee, that increase in transit fee was excessive and the character of the fee has changed from simple regulatory fee to a fee which is for raising revenue.

186. The High Court in para 181 has returned the finding that "The revenue to be generated by the transit fee, would thus be at least 10 times more than the cost in collection of fees."

187. A three-judges Bench in ***Calcutta Municipal Corpn. And others vs. Shrey Mercantile (P) Ltd. and others, 2005 (4) SCC 245*** had considered provisions of Calcutta Municipal Corporation (Taxation) Regulations, 1989 whether levy was made on *advalorem* basis. The Court examined the issue as to whether such levy is a "fee" or a "tax". The Court held the levy in the nature of tax and

also held it arbitrary and discriminatory, violative of Article 14. The following was held in paragraph 16 by the High Court:

> *"**16.**Therefore, the main difference between "a fee" and "a tax" is on account of the source of power. Although "police power" is not mentioned in the Constitution, we may rely upon it as a concept to bring out the difference between "a fee" and "a tax". The power to tax must be distinguished from an exercise of the police power. The "police power" is different from the "taxing power" in its essential principles. The power to regulate, control and prohibit with the main object of giving some special benefit to a specific class or group of persons is in the exercise of police power and the charge levied on that class to defray the costs of providing benefit to such a class is "a fee". Therefore, in the aforestated judgment in Kesoram case[1] it has been held that where regulation is the primary purpose, its power is referable to the "police power". If the primary purpose in imposing the charge is to regulate, the charge is not a tax even if it produces revenue for the Government. But where the Government intends to raise revenue as the primary object, the imposition is a tax. In the case of Synthetics & Chemicals Ltd. v. State of U.P.[3] it has been held that regulation is a necessary concomitant of the police power of the State and that though the doctrine of police power is an American doctrine, the power to regulate is a part of the sovereign power of the State, exercisable by the competent legislature. However, as held in*

> *Kesoram case[1] in the garb of regulation, any fee or levy which has no connection with the cost or expense of administering the regulation cannot be imposed and only such levy can be justified which can be treated as a part of regulatory measure. To that extent, the State's power to regulate as an expression of the sovereign power has its limitations. It is not plenary as in the case of the power of taxation."*

188. The Court further held that since the Regulation provides for imposition of fee on *advalorem* basis which is a circumstance to show that the impugned levy is in the nature of tax and not in the nature of a fee. In paragraph 18 following was stated;

> *"18..Further, under the Regulations, the Corporation while prescribing fees has levied fees on ad valorem basis which is one more cirumstance to show that the impugned levy is in the nature of tax and not in the nature of a fee. Further, the qunatum of levy indicates that it is a tax and not a fee. The analysis of the various provisions of the Act and the impugned Regulations shows that the impugned levy is in exercise of power of taxation under the said Act to augment the revenues primarily and not as a part of regulatory measure."*

189. Shri Ravindra Srivastava, learned senior counsel, appearing for the State has submitted that no exception

can be taken to the adoption of *advalorem* basis for imposition of transit fee by means of Fifth Amendment Rules. He submits that when a State is competent to levy fee, what shall be the yardstick of such levy depends on facts of each case and the State can find its own basis for determining the extent of fee. He has relied on three-Judges Bench judgment in ***P.M. Ashwathanarayana Sefty and others vs. State of Karnataka and others, 1989 Supp.(1) SCC 696.*** He submits that this Court in the above case was considering the levy of Court fee under Karnataka Court Fee Valuation Act, 1958. The Court fee was leviable on *advalorem* basis and the Court proceeded to examine the issue as to whether Court fee can be levied on *advalorem* basis. This Court in the above case has also held that a fee may shed its complexion as a fee and assume that of a tax. In paragraph 40 of the judgment following was held:

> *"**40.** A fee which at the inception is supportable as one might shed its complexion as a fee and assume that of a tax by reason of the accumulation of surpluses or the happening of events which tend to affect and unsettle the requisite degree of correlation."*

190. The Court also addressed the issue as to whether *advalorem* principle which is appropriate to taxation would be inapplicable in the context of an impost which is meant as a contribution towards the of costs of service. The Court held that in view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the legislature in the matter of its preferences of economic and social policies. The Court further held that the question of the measure of tax or a fee should be *advalorem* or *ad quantum* is again a matter of fiscal policy. The Court ultimately held that although *advalorem* principle which may not be an ideal basis for distribution of a fee but no unconstitutionality or infirmity can be incurred. However, the Court has held that 'fee' meant to defray expenses of services cannot be applied towards objects of general public utility. In paragraph 96 following is stated:

> *"**96.** The power to raise funds through the fiscal tool of a fee is not to be confused with a compulsion so to do. While "fee" meant to defray expenses of services cannot be applied towards objects of general public*

utility as part of general revenues, the converse is not valid. General public revenues can, with justification, be utilised to meet, wholly or in substantial part, the expenses on the administration of civil justice. Many States including Karnataka and Rajasthan had, earlier, statutory upper limits fixed for the court fee. But later legislation has sought to do away with the prescription of an upper limit. The insistence on raising court fees at high rates recalls of what Adam Smith-"Wealth of Nations" said:

> *"There is no art which one government sooner learns of another than that of drawing money from the pockets of the people.""*

191. In the aforesaid case, the Court, however, had struck down Entry 20 in Schedule I of the Bombay Act where *advalorem* Court fee was imposed without the benefit of upper limit of Rs.15,000/- which was prescribed in respect of other suits and proceedings. The Court held the aforesaid imposition as arbitrary and upheld the judgment striking down the above provision. Paragraph 90 to 93 of the judgment are relevant and are extracted below:

*"**90.** In the appeal of the State of Maharashtra arising out of the Bombay Court Fees Act, 1959, the High Court has struck*

down the impugned provisions on the ground that the levy of court fee on proceedings for grant of probate and letters of administration ad valorem without the upper limit prescribed for all other litigants—the court fee in the present case amounts to Rs 6,14,814 —is discriminatory. The High Court has also held that, there is no intelligible or rational differentia between the two classes of litigation and that having regard to the fact that what is recovered is a fee, the purported classification has no rational nexus to the object. The argument was noticed by the learned Single Judge thus:

> *Petitioners next contend that the impugned clause discriminates as between different types of suitors and that there is no justification for this discrimination. Plaintiffs who go to civil courts claiming decrees are not required to pay court fees in excess of Rs 15,000. This is irrespective of the amounts claimed over and above Rs 15 lakhs. As against this, persons claiming probates have no such relief in the form of an upper limit to fee payable.*

91. *This contention was accepted by the learned Single Judge who has upheld the appeal. Indeed, where a proceeding for grant of probate and letters of administration becomes a contentious matter, it is registered as a suit and proceeded with accordingly. If in respect of all other suits of whatever nature and complexity an upper limit of Rs 15,000 on the court fee is fixed, there is no logical justification for singling out this proceeding for an ad valorem impost without the benefit of some upper limit prescribed by the same statute*

respecting all other litigants. Neither before the High Court — nor before us here — was the impost sought to be supported or justified as something other than a mere fee, levy of which is otherwise within the State's power or as separate "fee" from another distinct source. It is purported to be collected and sought to be justified only as court fee and nothing else.

92. The discrimination brought about by the statute, in our opinion, fails to pass the constitutional muster as rightly pointed out by the High Court. *The High Court, in our opinion rightly, held:*

> *"There is no answer to this contention, except that the legislature has not thought it fit to grant relief to the seekers of probates, whereas plaintiffs in civil suits were thought deserving of such an upper limit. The discrimination is a piece of class legislation prohibited by the guarantee of equal protection of laws embodied in Article 14 of the Constitution. On this ground also item 10 cannot be sustained."*

93. *We approve this reasoning of the High Court and the decision of the High Court is sustained on this ground alone. In view of this any other ground urged against the constitutionality of the levy is unnecessary to be examined."*

192. The Court thus struck down a provision of the Court fee where there was no maximum cap on *advalorem basis*. *T*here was no maximum cap in the Fifth Amendment Rules

although minimum fee was prescribed. Even in some of the cases of fee *advalorem principle* may be applied but we are of the considered opinion that in case of transit fee where the object and purpose is regulation of transit of forest produce adoption of *advalorem* principle for levy of transit fee was not appropriate and such levy changed the character of fee into a tax which has rightly been so held by the High Court. We are, thus, of the view that the High Court has given cogent and valid reason for striking down the Fourth and Fifth Amendment Rules which decision was rendered by the High Court after elaborate and proper consideration of material brought before the Court after analysing the purpose and object of the imposition of transit fee. We, thus, affirm the judgment of the High Court striking down Fourth and Fifth Amendment Rules.

Transfer Petitions

193. This Court wide its order dated 19.11.2012 had already directed the transfer petitions to be heard along with SLP(C)NO.11367 of 2007. The Transfer Petitions, thus, deserve to be decided in terms of the Civil Appeal

arising out of SLP(C)No.11367 of 2007.

Contempt Petitions

194. The seven Contempt Petitions have been filed in which notices have not yet been issued. All the Civil Appeals being decided by this order, the contempt petitions deserve to be dismissed.

XVIII. Interim orders passed against the judgment of the Allahabad High Court

295. In this batch of appeals in some appeals interim order were passed. In some of the appeals, no interim order was passed. This Court noticing the divergent orders passed in the batch of appeals, passed a detailed interim order on 29.10.2013 which was to the following effect:

> *"1) The State shall be free to recover transit fee for forest produce removed from within the State of U.P. at the rate stipulated in the 3rd amendment to the Rules mentioned in the earlier part of this order.*
>
> *2) Any such recovery shall remain subject to the ultimate outcome of present petitions pending in this Court.*
> *3) In the event of writ petitioners/private parties succeeding in their cases, the amount deposited/recovered from them shall be refunded to*

them with interest at the rate of 9% p.a. from the date the deposit was made till actual refund.

4) The State shall maintain accurate amount of recovery made and the nature and the quantum/quantity of the produce removed by the private parties concerned.

5) Even in the 2nd batch of cases arising out of Writ Petition No. 975 of 2004 whereby the High Court has struck down the 4th and 5th amendment to the Rules, the State shall be free to make recoveries in terms of the 3rd amendment in regard to the forest produce removed from within the State of U.P. The operation of the orders passed by the High Court shall to that extent remain stayed.

6) This modification shall not apply to exempted goods or industrial by products like Klinker and fly ash."

196. By a subsequent order dated 26.04.2016, this Court further modified the interim order dated 29.10.2013. The order dated 29.10.2013 was modified on 26.04.2016 to the following effect:

"(1) Insofar as forest produce as defined in sub-clause(a) of Clause(4) of Section 2 is concerned, the State shall be free to recover transit fee within the State of U.P. at the rate stipulated in the fifth amendment to Rule 5 as aforesaid;

(2) Insofar as forest produce originating from State of U.P. and covered by sub-clause (b) of Clause (4) of Section 3 is concerned, the

State shall be free recover transit fee at the rate stipulated in the fifth amendment to the aforesaid Rule 5.

(3) Insofar as forest produce covered under sub-clause(b) of Clause(4) of Section 2, which does not originate from State of U.P. but is merely passing through the State, the State shall be free to recover transit fee in respect of such forest produce at the rate stipulated in the fourth amendment to aforesaid Rule 5.

(4) Any such recovery shall remain subject to the ultimate outcome of present petitions pending in this Court.

(5) In the event of writ petitioners/private parties succeeding in their cases, the amount deposited/recovered 27 from them shall be refunded to them with interest @ 9% per annum from the date of deposit till actual refund.

(6) The State shall maintain accurate amount of recovery made and the nature/quantity of the produce removed by the private party is concerned.

(7) These modified directions shall come into effect on and from 1 st May 2016. (8) This modification shall not apply to exempted goods or industrial by-products like Klinker fly ash."

197. This Court directed that State shall be free to recover transit fee within the State of U.P. at the rate stipulated in the Fifth Amendment to Rule 5.

198. The Court also held that such recovery shall remain subject to the ultimate outcome of present cases pending in this Court. With further condition that in the event of writ petitioners/private parties succeeding in their, the amount deposited/recovered from them be refunded with interest @9%.

199. We having upheld the judgment of the High Court dated 11.11.2011 striking down Fourth and Fifth Amendment Rules further steps needs to be taken as per interim direction dated 26.04.2016 which came into the effect from 01.05.2016. It is made clear that in so far as prior to 01.05.2016 recovery was permitted as per Third Amendment Rules which has been upheld, there is no question of considering any claim of refund of any transit fee prior to 01.05.2016. The transit fee is an indirect tax and the State is entitled to consider the claim of refund provided the Entry Tax has not passed on to the consumer which may result into unjust enrichment. Thus we permit the State to consider any claim of refund of transit fee on the condition that State shall permit

refund only after being satisfied that there is no passing of the transit fee to the ultimate consumer and refund may not result in unjust enrichment.

XIX. CIVIL APPEALS OF STATE OF M.P. FILED AGAINST THE JUDGMENT DATED 14.05.2007

200. The Writ Petitions were filed by the respondents to the Civil Appeals in the High Court of Madhya Pradesh praying for quashing the Notification dated 28.05.2001 issued by the State of Madhya Pradesh fixing the amount of Transit Fee for issuance of Transit Pass in exercise of power under Rule 5 of the M.P. Transit (Forest Produce) Rules, 2000 (hereinafter referred to as 'Rules, 2000'). Writ Petitioners have also prayed for declaring Section 2 (4)(b)(iv) and Section 41 of Indian Forest Act, 1927(hereinafter referred to as 'Act, 1927') as unconstitutional and *ultra vires* to the extent they relate to minerals. Rule 5 of Rules, 2000 as well as Notification dated 28.05.2001 was also sought to be declared as *ultra vires* to the powers of the State

Government under Act, 1927. In the Writ Petition the writ petitioners raised the following contentions:

201. The Regulatory Fee with regard to transit fee on minerals is totally illegal and without jurisdiction in as much as the field is covered by the MMDR Act 1957. Regulatory Fee imposed by the State of Madhya Pradesh is a direct encroachment on the regulatory measures which are covered within the Act, 1957. Mineral Concession Rules, 1960(hereinafter referred to as 'Rules, 1960') read with Mineral Transit Pass Regulations, 1996(hereinafter referred to as 'Regulations, 1996'), which specifically provides for issue of transit pass and charging of fee covers the field and State Government cannot frame any rule of the present nature effecting the transportation of mineral. Rule 5 of Rules, 2000 as well as Notification dated 28.05.2001 are contrary to Section 41 of Act, 1927. The Act, 1927 being a pre-constitutional statute enacted by the dominion legislature and Act, 1957 being a parliamentary enactment will have overriding effect over the provisions of the earlier statute. The State Government

has put the fee on Transit Pass qua tonnage which makes it colourable piece of exercise of power.

202. The State contested the Writ Petition by filing counter-affidavit and contended that the Act, 1927 has been designed to protect and increase the forest wealth and Notification dated 28.05.2001 has been issued in exercise of power under Rule 5 of Rules, 2000, which were framed under Section 41 of the Act, 1927. The Regulatory Fee is not charged on extraction of mineral and there is no encroachment on the provisions of Act, 1957. The Regulatory Fee is charged only on the transportation of minerals. The method chosen by State Government to levy the fee on the basis of quantity of minerals would not change the nature and character of the levy. The power of regulation and control under Act, 1957 is totally different from the imposition of Regulatory Fee on Forest Produce by the State.

203. The Division Bench of the High Court by its judgment dated 14.05.2007, although repelled the several arguments of petitioner which we shall shortly notice hereinafter but declared the Notification dated

28.05.2001 as beyond the scope of Section 41 of Act, 1927.

204. Learned senior counsel in support of the appellants contends that the Act, 1927, the Transit Rules, 2000, and Act, 1957 operate in different fields and spheres and the mere incidental trenching or overlapping of the provisions of the State enactment will not render the State enactment unconstitutional. The view of the High Court that Notification dated 28.05.2001 is invalid and beyond the scope of Section 41 of Act, 1927 is erroneous. The Transit Pass is computed on the basis of weight/volume of the Forest Produce so as to maintain the consistency and transparency in computation of transit fees. The computation or measure of levy will never change the nature of the levy which in the present case is regulatory in nature.

205. The High Court having held that the rules framed by the State under Section 41 of the Act, 1927 operates in different fields and spheres from the MMDR Act, 1957 and the State government has the legislative competence to frame the rules, holding that the computation of fee

on the basis of weight/volume of the Forest Produce is illegal, cannot he sustained. He further contended that the High Court has issued direction for refund of the fees collected by the State in pursuance of the Notification dated 28.05.2001 and it is submitted that the direction of the High Court to refund the fees is contrary to the law settled by this Court that in indirect taxes the burden is already transferred to the consumers and therefore, direction to refund the tax so collected, the burden of which has already been transferred, will lead to unjust enrichment of assessee.

206. Learned counsel appearing for the writ petitioner have refuted the contention of the State and has reiterated the submissions. Respondent-petitioners have further raised the submissions, which were pressed before the High Court. It is submitted that even though the respondent-petitioners has not filed any Special Leave Petition challenging the judgment of the High Court dated 14.05.2009, they are entitled to urge the grounds which were pressed before the High Court in support of the Writ Petition.

207. It is submitted that petitioner does not mine coal but buys it from Northern Coal Fields Ltd. or from other coal fields. Petitioner also reimburses the royalty etc on the coal purchased from different coal fields as per the provisions of Act, 1957. The impugned demand is illegal and without jurisdiction as the field is fully occupied by rules made thereunder. The Transit Fee of Rs. 7 per tonne fixed by Notification dated 28.05.2001 is Transit Fee on minerals which is illegal and without jurisdiction.

208. We have considered the submissions raised by learned counsel for the parties and perused the record. Before we proceed to consider the submission, it is necessary to notice the finding given by the Division Bench of the High Court in the impugned judgment on various contentions raised before it. The Division Bench of the High Court considered the submission of learned counsel for the writ petitioners that Act, 1957 occupies the field and the State had no jurisdiction to frame any rules regarding transit of minerals. After noticing the various judgments of this Court, the Division Bench

concluded that two enactments i.e. Act, 1927 and Act, 1957 operate in different areas. The Division Bench specifically rejected the argument of writ petitioners that Section 2(4)(b)(iv) and Section 41 of the Act, 1927 be declared *ultra vires*. The Division Bench of the High Court also noticed the judgment of this Court in ***Sudhir Ranjan Nath (supra) and Sitapur Packing Wood Suppliers (supra)***. In para 63 of the judgment following was held:

> *"63...We have referred to two judgments of the Apex Court and we are of the considered opinion on that both the enactments operate in different areas. The operational sphere being different we conclude and hold that the submission that Section 2 (4)(b)(iv) and Section 41 should be declared ultra vires is sans substratum and we repel the same."*

209. The Division Bench of the High Court further rejected the submission of the writ petitioners impugning the Rule 5 of Rules, 2000 framed under Section 41 of the Act, 1927. In para 71 & 72 following has been held:

> *"71. On a perusal of the aforesaid form it is perceptible that there is mention of locality of storage, name and address of the owner, description of produce and quantity, name of place of transportation, route and*

barrier at which forest produce would be produced for check. On a perusal of the aforesaid form it is manifest that it pertains to forest produce at large. Fee can be levied but the fee must have nexus with the transit for checking in the context of forest goods. Hence, we are not inclined to accept the contention of the learned senior counsel for the petitioners that framing of the said rule under Section 41(2) is not permissible."

> *"72....At this juncture we may repeat at the cost of repetition that the purpose of Section 41 of the 1927 Act, and the purpose of the MMDR Act are quite different..."*

210. The High Court thus has rejected the submission of the writ petitioners, holding that both 1927 Act and 1957 Act operate into different spheres. The High Court further held that rule framed by the State under Section 41 of the Act, 1927 i.e. Rule 5 of Rules, 2000 is valid. Various submissions of the writ petitioners reiterated before us on the basis of Act, 1957 and rules framed thereunder including Section 4(1A) and Section 23C of Act, 1957 have already been considered by us, while considering the submission raised with regard to Civil Appeals arising from the judgment of

the Allahabad High Court. The above submission having already noted and considered, it needs no repetition here. Hence, submission raised by learned counsel for the writ petitioners on the basis of Act, 1957 is thus rejected.

211. Now, we come to the reason on the basis of which Division Bench of the High Court has allowed the Writ Petition by quashing the Notification dated 28.05.2001. The High Court held that the Notification dated 28.05.2001 is contrary to the provisions of Section 41 of the Act, 1927 and the notification transgresses Rule 5 of Rules, 2000 because Rule 5 provides that State Government or an authorised officer by it, from time to time, shall fix the rate of the fee for issue of Transit Pass. The fee is to be issued for issue of Transit Pass and Transit Pass by no stretch of imagination can have any nexus with unit of minerals. Thus in fact, it is a fee pertaining to the minerals and not a fee issued on Transit Pass. In para 74 of the judgment, following has been held by the High Court:

"74...Hence, we have no doubt in holding that the notification issued is contrary to the provisions of Section 41 of the Forest Act and in fact such issuance of notification cannot be said to be in consonance with the said provision. It transgresses Rule 5 because Rule 5 stipulates that the State Government or an officer authorised by it from time to time shall fix the rate of fee for issue of transit pass as per the provisions of Rule 4. Thus the fee is to be fixed for issue of a transit pass and a transit pass by no stretch of imagination can have any nexus with the unit of minerals in fact if we allow ourselves to say, it is said to be a gymnastic in the rule making process to impose a fee on the minerals in the guise of collection of fee on transit pass. In fact it is a fee pertaining to minerals and not a fee on issue of transit pass. As we have scanned the anatomy of the provisions of both the enactments rules framed there under and analysed the purport and import of the notification, the true nature and character of levy surface something different. The exact nature of levy cannot be marginalised by making a sweeping statement that is a measure of levy and the unit of minerals has been chosen as a rational basis as there is transportation by rope ways by land and by other means. The units chosen really tries to enter into the arena of regulation and control. It may innocuous look to be a measure or standard of fee on transit but in essentiality it is a trespass into the area of regulation and control. As has been stated earlier the 1957 Act is a regulatory Act and meant for minerals and minerals area development but such imposition of fee as we are disposed to think on the basis of

foregoing analysis creates a dent and concavity in the regulation and control. That apart the standard or measurement does not have any nexus with the essential character of the levy. Therefore the notification runs counter to the rule because that was not the intendment of the Rule and further that cannot be the intendment of the language in which sections 41 and 76 of the 1927 Act have been couched. Quite apart from the above, once we have held that Section 41 of the 1927 Act and the provisions of 1957 Act operate in different spheres and judged by those parameters, the notification has to be lanceted and accordingly we so hold."

212. Whether the above view of the High Court, holding that State could not have asked for payment of fee on Forest Produce on the basis of quantity/volume of the Forest Produce is correct ? We revert back to provision of Section 41 of the Act, 1927. Section 41 empowers the State to make rules to regulate the transit of Forest Produce. The rules thus can very well regulate the transit of the Forest Produce. Sub section 2 of Section 41 provides that "in particular and without prejudice to the generality of the foregoing provision such rules may,....(c) provide for the issue, production and return of such passes and

for the payment of fees therefore." Thus, power given to State is to regulate the transit of all timber and other Forest Produce and the rules may provide for issue of passes and for the payment of fees, therefore, fee for issue of the passes has correlation with the Forest Produce which is clear from the scheme of Rules, 2000. According to Rule 3 no Forest Produce shall move into or outside or within the State of Madhya Pradesh except in the manner as provided without a Transit Pass in Form A, B and C. The Forms of Transit Pass are part of the rules. For example, for ready reference, we extract the Form A of the Rule, which is to the following effect:

FORM A

[See Rule 6(2)]

Book No.	Counter foil Transit Pass	Page No.
1	Locality of Storage:- (a) Range (b) Division	
2	Name and address of owner of forest produce-	
3	Description of produce and quantity-	
4	Property mark etc.-	
5	Name of place to which the produce is to be transported-	
6	Route by which produce is to be transported-	

7	Barrier at which forest produce will be produced for check	
8	Date of expiry of pass-	

Note:- Second foil will be similar to the Counterfoil.

Signature of checking officer

Signature of issuing officer

213. Column three provides for description of produce and quantity.

Rule 5 of Rules, 2000 provides for as follows:

> *s"5. Rates of fee for issue of transit pass:-The State Government or an officer authorised by the State Government from time to time, shall fix rates of fee for issue of transit pass as per the provisions of Rule 4."*

214. The Rule provides for fixing of rates of fee for issue of Transit Pass. The word 'rate' has been defined in Advanced Law Lexicon by P. Ramanatha Aiyar, in the following words:

> *"Rate means a rate, cess or assessment the proceeds of which are applicable to public local purposes and leviable on the basis of a valuation of property, and includes any sum which, although obtained in the first instance by a precept, certificate or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate."*

215. When the State is empowered to fix rates of fee, it can very well fix the fee on the quantity of Forest Produce. High Court having upheld both Section 41 of the Act, 1927 as well as Rule 5 of Rules, 2000, we see no reason as to how the notification issued under Rule 5 can be held to be beyond the powers of the State.

216. When the State is empowered to fix the rate of fee, it has latitude under the statute to adopt a basis, for fixation of rates of fee. It cannot be said that under the statute fee can be charged only to meet the expenses which are incurred for printing or preparation of passes. The High Court has taken a incorrect view of the matter while coming to the conclusion that Notification dated 28.5.2001 is beyond the power of the State under Rule 5 of Rules, 2000. Rule 5 clearly empowers the State to fix the rate of fee and the rate of fee can be fixed on the basis of quantity/ volume of the Forest Produce. We thus are of the view that the High Court committed error in setting aside the Notification dated 28.05.2001. This Court in ***State of U.P. Vs. Sitapur Packing Wood***

Supplier (Supra) which judgment has already been noticed by Division Bench of High Court has considered the rules framed by State of U.P. under Section 41 of 1927 Act. Rule 5 of the U.P. Transit of Timber and Other Forest Produce Rules, 1978, provided for payment of transit fee on the forest produce calculated on the rates as mentioned therein. High Court had upheld the competence of the State in providing fee as set out in Rule 5 which was noticed by this Court in paragraph 7 of the judgment, which is to the following effect:-

> *"7. Having found that the constitutional competence in providing fee as set out in Rule 5 is not lacking, the High Court accepted the challenge to the validity of levy on the ground that the fee is not supported by the principle of quid pro quo. It held that no service is provided in lieu of the fee to any person much less to the person from whom the transit fee is charged. In the view of the High Court, reasonable relationship between the levy of the fee and the services rendered had not been established."*

217. High Court although upheld the competence of the State to provide fee but held that fee is not supported by principles of *quid pro quo*. On that ground transit fee

was held to be invalid. The view of the High Court was reversed and this Court held that charging of transit fee was valid. Following was held in paragraph 10 and 11:-

> *"10. The transit fee under Rule 5 is clearly regulatory and, thus, it was not necessary for the State to establish quid pro quo. The High Court was in error in holding the transit fee is invalid in absence of quid pro quo....*
>
> *11. For the aforesaid reasons, we allow these appeals and hold that the levy of the transit fee is valid and the judgment of the High Court is accordingly set aside. The parties are, however, left to bear their own costs."*

218. It is also relevant to note that although the High Court in its judgment has held that both 1957 Act and 1927 Act operate in different fields. However, it had also made observations that imposing fee by fixing tonnage and cubic meter as unit had entered into regulation and control, which is in the realm of the MMDR Act. In paragraph 74, following has been observed:-

> *"74....Though a stance has been taken that it is a regulatory fee and the State has to undertake many works for routes and environment and, therefore, it is to be regarded as regulatory fee but as we perceive, imposing fee by fixing tonnage and cubic meters as unit, it enters into the*

> *'regulation and control' which is in the realm of the MMDR Act, for it has impact on the mining activity and the primary purpose, as is patent, is to regulate the mineral. It is not for the purpose of regulating the transit of minerals but to have a regulatory measure of control of minerals. The difference between issue of transit pass for a fee has been galvanised into a fee on mineral unit which has a controlling effect on the development of minerals."*

219. We have already found that 1927 Act and 1957 Act operate in different fields. State has power to regulate transit of forest produce under section 41 of 1927 Act and the regulation of minerals and effect of transit rules framed by the State is only incidental on the regulatory control on the mineral as exercised under 1957 Act. The above observations of the Division Bench thus cannot be approved.

220. In result, in view of the foregoing discussion, we are of the view that High Court committed error in quashing the order dated 28.05.2001. The Civil Appeals filed by the State of Madhya Pradesh deserves to be allowed.

XX. CONCLUSIONS

221. In view of the foregoing discussion, we arrived at following conclusions:

I. (a) The crushing of stones, stone boulders into stone grits, stone chips and stone dust does not result into a new commodity different from forest produce. The crushed materials continue to be stone and retain their nature of forest produce.

(b) Coal with its various varieties, limestone, hydrated line, quick limestone, slake line, veneer and plywood waste are all forest produce.

(c) Marble blogs, marble slabs, marble chips are all forest produce.

(d) Flay ash, clinker, synthetic gypsum are not forest produce. Gypsum, however, is a forest produce.

II. The Indian Forest Act, 1927 and the Rules framed under Section 41 are neither overridden nor impliedly repealed, altered or amended by Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder. Both the above legislations operate in different spheres and fields.

III. The words “brought from” as occurring in Section 2(4)(b) of 1927 Act means brought from forest from where forest produce has originated. The words 'brought from forest' cannot be read as “brought through forest”. We, however, clarify that for an item to be treated as forest produce, its origin may be in any forest within the State of U.P. or in a forest outside the State of U.P.

IV. The forest has to be understood according to its dictionary meaning which covers the statutory recognised forest and also shall include any area regarded as forest in the Government record irrespective of the ownership. The meaning of forest cannot be restricted only to reserve forests, protected forests and village forests.

V. The roads notified by notification dated 10.02.1960 under Section 80A of 1927 Act cannot be read to mean that such roads have been declared as protected forest. The notification dated 10.2.1960 can only be read to mean that both sides of the road have been declared as protected forest on which Chapter IV of the 1927 Act

shall be applicable.

VI. Rule 3 of 1978 Rules is not independent of Rule 5 of 1978 Rules. Transit fee is payable on all kinds of transit passes and cannot be confined only to transit passes as referred to in Rule 4(1)(b) only.

VII. After issuance of notification under Section 4 of 1927 Act, removal of forest produce therefrom shall be governed by the Rules framed by the State in view of U.P. Act 23 of 1965 by which original Section 5 has been substituted in its application in the State of U.P. The fact that no notification under Section 20 has been issued does not mean that restriction put by the State Government by Rules are not applicable.

VIII. The Division Bench of the Allahabad High Court by its judgment dated 11.11.2011 has rightly struck down Fourth and Fifth Amendment Rules to 1978 Rules as being excessive and confiscatory in nature.

IX. The notification dated 28.05.2001 issued by the State of Madhya Pradesh in exercise of power under Rule 5

of 2000 Rules cannot be said to be beyond the scope of Rule 5 of 2000 Rules and Section 41 of 1927 Act. The State of Madhya Pradesh was fully justified in fixing rate of transit fee at the rate of Rs.7/- and Rs.4/- per tonne which was well within the power of the State under Rule 5 of 2000 Rules framed under the 1927 Act.

222. In view of the foregoing discussion, we decide this batch of cases in following manner:

(1) All Civil Appeals filed by the State of U.P. and State of Uttarakhand challenging the judgments of the High Court of Uttarakhand dated 01.7.2004, 20.03.2005, 26.06.2007 and subsequent judgments following the aforesaid three judgments are allowed. The impugned judgments are set aside and the writ petitions stand dismissed.

(2) All the Civil Appeals filed by the State of U.P. against the judgment dated 11.11.2011 and subsequent judgments following judgment dated 11.11.2011 are dismissed.

(3) The Civil Appeals filed by the writ petitioners against the judgment of the Allahabad High Court dated

27.04.2005 and the subsequent judgments following the judgment dated 27.04.2005 as well as the Civil Appeals filed by the writ petitioners against the judgment dated 11.11.2011 and other subsequent judgments following the judgment dated 11.11.2011 are disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII).

(4) The transfer petitions are disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII) and Writ Petition(C) No.203 of 2009 (M/s. Pappu Coal Master & Ors. vs. State of U.P. & Anr.) is also disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII)

(5) The writ petitioners from whom the transit fee was realised with effect from 01.05.2016 in accordance with the Fifth Amendment to 1978 Rules shall be entitled to claim for refund along with interest @ 9% which shall be considered by the State or any officer authorised by the State. The claim of refund shall be allowed only if the assessee alleges and establishes that he has not passed on the burden to any other person, since it is well

settled that the power of the Court is not meant to be exercised for unjustly enriching a person.

(6) All the Contempt Petitions are dismissed.

(7) All the Civil Appeals filed by the State of Madhya Pradesh against judgment dated 14.05.2007 are allowed. The judgment of the Division Bench of the High Court dated 14.05.2007 is set aside and the writ petitions stand dismissed.

223. Parties shall bear their own costs.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
SEPTEMBER 15, 2017.

IN THE SUPREME COURT OF INDIA
CIVIL APPEALLATE JURISDICTION

CIVIL APPEAL NO.2047 OF 2006

STATE OF UTTARANCHAL & ORS. ... APPELLANT

VERSUS

HIMALAYA STONE INDUSTRY & ORS. ... RESPONDENTS

WITH SLP(C)NO.13656 OF 2002 (ADITYA BIRLA CHEMICALS (INDIA) LTD. AND
SLP(C)No.15721 of 2012 (M/S. NANAK TRANSPORT AND COAL SUPPLIERS & OTHERS)

O R D E R

C.A.NO.2047 of 2006

Order in this appeal has been reserved on 03.08.2017. This appeal does not relate to entry tax rather the leviability of Trade Tax under the U.P. Trade Tax Act, 1948. This appeal is de-tagged to be listed after two weeks.

SLP(C)Nos.13656 and 15721 of 2012

Order in these petitions has been reserved on 03.08.2017. These are de-tagged to be listed before a Bench of which Hon'ble Mr. Justice Ashok Bhushan is not a member.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
SEPTEMBER 15, 2017.

REVISED

ITEM NO.1502 COURT NO.6 SECTION X

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No(s).14874/2017 @ Petition(s) for Special Leave to Appeal (C)No(s)19445/2004

STATE OF UTTARANCHAL & ORS. Appellant(s)

VERSUS

M/S. KUMAON STONE CRUSHER Respondent(s)

WITH

C.A. No. 14446/2017 @ SLP(C) No.3189/2012
C.A. No. 14448/2017 @ SLP(C) No.1675/2012
C.A. No. 14922/2017 @ SLP(C) No.8713/2008
C.A. No. 14924/2017 @ SLP(C) No.10601/2008
C.A. No. 14923/2017 @ SLP(C) No.9513/2008
C.A. No. 14920/2017 @ SLP(C) No.6959/2008
C.A. No. 14921/2017 @ SLP(C) No.6958/2008
C.A. No. 14452/2017 @ SLP(C) No.950/2012
C.A. No. 14453/2017 @ SLP(C) No.1031/2012
C.A. No. 14464/2017 @ SLP(C) No.948/2012
C.A. No. 14465/2017 @ SLP(C) No.1169/2012
C.A. No. 14468/2017 @ SLP(C) No.1197/2012
C.A. No. 14469-14476/2017 @ SLP(C) No.2213-2220/2012
T.P.(C) No.76/2012
T.P.(C) No.77/2012
C.A. No. 14485/2017 @ SLP(C) No.1697/2012
C.A. No. 14486/2017 @ SLP(C) No.2082/2012
C.A. No. 14492/2017 @ SLP(C) No.2236/2012
C.A. No. 14493/2017 @ SLP(C) No.2081/2012
C.A. No. 14495/2017 @ SLP(C) No.2399/2012
C.A. No. 14497-14509/2017 @ SLP(C) No.3152-3164/2012
C.A. No. 14510-14523/2017 @ SLP(C) No.2938-2951/2012
C.A. No. 13122-13129/2017 @ SLP(C) No.3192-3199/2012
C.A. No. 13300/2017 @ SLP(C) No.1822/2012
C.A. No. 13301/2017 @ SLP(C) No.4832/2012
C.A. No. 13313-13319/2017 @ SLP(C) No.4002-4008/2012
C.A. No. 13320/2017 @ SLP(C) No.6144/2012
C.A. No. 13346-13358/2017 @ SLP(C) No.3512-3524/2012
C.A. No. 13360-13378/2017 @ SLP(C) No.3320-3338/2012
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C.A. No. 13399-13404/2017 @ SLP(C) No.8204-8209/2013
C.A. No. 13104/2017
C.A. No. 2047/2006

Date : 15-09-2017 These matters were called on for pronouncement of judgment today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

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Mr. Arvind Kumar, AOR
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Mr. Praveen Jain, AOR
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Mr. R. P. Gupta, AOR
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Mr. R. D. Upadhyay, AOR
Mr. C. D. Singh, AOR
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Mr. Aftab Ali Khan, AOR
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Mr. Vishwajeet Singh, Adv.

Ms. Vanita Bhargava, Adv.
Mr. Ajay Bhargava,Adv.
Mr. Jeevan B. Panda, Adv.
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Mr. S.K. Dhingra, Adv.

Ms. Shefali Mitra, Adv.

Mr. Gaurav Agarwal, Adv.
Mr. Raj Singh Rana, Adv.

Mr. Bharat Sangal, AOR
Ms. S.S. Reddy, Adv.
Ms. Vidushi Garg, Adv.
Ms. Isha Gupta, Adv.
Ms. Vernika Tomar, Adv.
Ms. Anindita Deka, Adv.
Ms. Pragati Neekhra, AOR
Mr. U.A. Rana, Adv.
Mr. Himanshu Mehta, Adv.
Mr. Avirat Kumar, Adv.
Gagrat And Co, AOR

Hon'ble Mr. Justice Ashok Bhushan pronounced the judgment of the Bench comprising Hon'ble Mr. Justice A.K. Sikri and His Lordship.

(1) All Civil Appeals filed by the State of U.P. and State of Uttarakhand challenging the judgments of the High Court of Uttarakhand dated 01.7.2004, 20.03.2005,26.06.2007 and subsequent judgments following the aforesaid three judgments are allowed. The impugned judgments are set aside and the writ petitions stand dismissed.

(2) All the Civil Appeals filed by the State of Uttar Pradesh against the judgment dated 11.11.2011 and subsequent judgments following judgment dated 11.11.2011 are dismissed.

(3) The Civil Appeals filed by the writ petitioners against the judgment of the Allahabad High Court dated 27.04.2005 and the subsequent judgments following the judgment dated 27.04.2005 as well as the Civil Appeals filed by the writ petitioners against the judgment dated 11.11.2011 and other subsequent judgments following the judgment dated

11.11.2011 are disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII).

(4) The transfer petitions are disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII) and Writ Petition(C) No.203 of 2009 (M/s. Pappu Coal Master & Ors. vs. State of U.P. & Anr.) is also disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII)

(5) The writ petitioners from whom the transit fee was realised with effect from 01.05.2016 in accordance with the Fifth Amendment to 1978 Rules shall be entitled to claim for refund along with interest @ 9% which shall be considered by the State or any officer authorised by the State. The claim of refund shall be allowed only if the assessee alleges and establishes that he has not passed on the burden to any other person, since it is well settled that the power of the Court is not meant to be exercised for unjustly enriching a person.

(6) All the Contempt Petitions are dismissed.

(7) All the Civil Appeals filed by the State of Madhya Pradesh against judgment dated 14.05.2007 are allowed. The judgment of the Division Bench of the High Court dated 14.05.2007 is set aside and the writ petitions stand dismissed.

<u>C.A.NO.2047 of 2006</u>

Order in this appeal has been reserved on 03.08.2017. This appeal does not relate to entry tax rather

the leviability of Trade Tax under the U.P. Trade Tax Act, 1948. This appeal is de-tagged to be listed after two weeks.

SLP(C)Nos.13656 and 15721 of 2012

Order in these petitions has been reserved on 03.08.2017. These are de-tagged to be listed before a Bench of which Hon'ble Mr. Justice Ashok Bhushan is not a member.

(B.PARVATHI)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order / reportable judgment is placed on the file)

ITEM NO.1502 COURT NO.6 SECTION X

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No(s).14874/2017 @ Petition(s) for Special Leave to Appeal (C)No(s)19445/2004

STATE OF UTTARANCHAL & ORS. Appellant(s)

VERSUS

M/S. KUMAON STONE CRUSHER Respondent(s)

WITH

C.A. No. 14446/2017 @ SLP(C) No.3189/2012
C.A. No. 14448/2017 @ SLP(C) No.1675/2012
C.A. No. 14922/2017 @ SLP(C) No.8713/2008
C.A. No. 14924/2017 @ SLP(C) No.10601/2008
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C.A. No. 13104/2017
C.A. No. 2047/2006

Date : 15-09-2017 These matters were called on for pronouncement of judgment today.
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HON'BLE MR. JUSTICE ASHOK BHUSHAN

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Ms. Pragati Neekhra, AOR
Mr. U.A. Rana, Adv.
Mr. Himanshu Mehta, Adv.
Mr. Avirat Kumar, Adv.
Gagrat And Co, AOR

Hon'ble Mr. Justice Ashok Bhushan pronounced the judgment of the Bench comprising Hon'ble Mr. Justice A.K. Sikri and His Lordship.

(1) All Civil Appeals filed by the State of U.P. and State of Uttarakhand challenging the judgments of the High Court of Uttarakhand dated 01.7.2004, 20.03.2005,26.06.2007 and subsequent judgments following the aforesaid three judgments are allowed. The impugned judgments are set aside and the writ petitions stand dismissed.

(2) All the Civil Appeals filed by the State of Uttar Pradesh against the judgment dated 11.11.2011 and subsequent judgments following judgment dated 11.11.2011 are dismissed.

(3) The Civil Appeals filed by the writ petitioners against the judgment of the Allahabad High Court dated 27.04.2005 and the subsequent judgments following the judgment dated 27.04.2005 as well as the Civil Appeals filed by the writ petitioners against the judgment dated 11.11.2011 and other subsequent judgments following the judgment dated

11.11.2011 are disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII).

(4) The transfer petitions are disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII) and Writ Petition(C) No.203 of 2009 (M/s. Pappu Coal Master & Ors. vs. State of U.P. & Anr.) is also disposed of in terms of our conclusion as recorded in paragraph 221(I to VIII)

(5) The writ petitioners from whom the transit fee was realised with effect from 01.05.2016 in accordance with the Fifth Amendment to 1978 Rules shall be entitled to claim for refund along with interest @ 9% which shall be considered by the State or any officer authorised by the State. The claim of refund shall be allowed only if the assessee alleges and establishes that he has not passed on the burden to any other person, since it is well settled that the power of the Court is not meant to be exercised for unjustly enriching a person.

(6) All the Contempt Petitions are dismissed.

(7) All the Civil Appeals filed by the State of Madhya Pradesh against judgment dated 14.05.2007 are allowed. The judgment of the Division Bench of the High Court dated 14.05.2007 is set aside and the writ petitions stand dismissed.

(8) Pending applications, if any, stand disposed of.

<u>C.A.NO.2047 of 2006</u>

Order in this appeal has been reserved on 03.08.2017. This appeal does not relate to entry tax rather

the leviability of Trade Tax under the U.P. Trade Tax Act, 1948. This appeal is de-tagged to be listed after two weeks.

SLP(C)Nos.13656 and 15721 of 2012

Order in these petitions has been reserved on 03.08.2017. These are de-tagged to be listed before a Bench of which Hon'ble Mr. Justice Ashok Bhushan is not a member.

(B.PARVATHI)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order / reportable judgment is placed on the file)