Serial No. 1 to 7
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 112 of 2020 with
WP(C) No. 113 of 2020
WP(C) No. 114 of 2020
WP(C) No. 115 of 2020
WP(C) No. 116 of 2020
WP(C) No. 117 of 2020
WP(C) No. 118 of 2020

Date of Decision: 26.06.2020

Marbat Dohkrot	**Vs.**	State of Meghalaya & Ors.
Hamarless Roy Thabah	**Vs.**	State of Meghalaya & Ors.
Tamdor Singh Nadon	**Vs.**	State of Meghalaya & Ors.
Jrop Singh Nongkhlaw	**Vs.**	State of Meghalaya & Ors.
Arena Hynniewta	**Vs.**	State of Meghalaya & Ors.
Philosopher Iawphniaw	**Vs.**	State of Meghalaya & Ors.
Bhuteswar Lyngdoh	**Vs.**	State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner(s) : Mr. H.L. Shangreiso, Adv.

For the Respondent(s) : Mr. A. Kumar, AG with
Mr. S. Sen, Sr. GA
Mr. A.H. Kharwanlang, GA

i) Whether approved for reporting in Law journals etc. Yes

ii) Whether approved for publication in press: No

Per. H.S. Thangkhiew, (J):

Matter taken up via Video Conferencing.

1. This instant batch of writ petitions assailing the impugned demand notices issued under Rules 11(2) and 11(4) of the Meghalaya Mineral

Cess Rules, 1989, being similar and identical in facts and circumstances, are proposed to be disposed of by this common judgment and order.

2. All the writ petitioners are holders of valid mining leases under the provisions of the Meghalaya Minor Mineral Concession Rules, 2016 framed under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. The writ petitioners produce and extract limestone for the manufacturing of lime and for raw limestone export to Bangladesh by paying the requisite royalty amount, reclamation fee as well as GST.

3. The grievance of the petitioners is that the impugned demand notices had been served upon them, directing the submission of returns as per the rules, and also for payment of arrear cess charged under the Meghalaya Mineral Cess Rules, 1989 within a period of 60 days, from the date of the impugned demand notice. The grievance of the writ petitioners, is based on the pleading that the impugned demand notices, can never be construed as a statutory notice issued under Rule 11(2) in 'Form H', and that further, the tax liability period for filing of returns and the date for submission of the same under Rule 5, are completely absent in the impugned demand notices, which have been issued under the provisions of Meghalaya Mineral Cess Rules, 1989. Further grievance is that the Director (Respondent No. 3) has already pre-determined the arrear cess payable, while at the same time directing the petitioners to submit the returns, which they assert, is in violation of the statutory requirements. As such, the writ petitioners are before this Court by way of these writ petitions.

4. Before embarking upon the discussion on the matter, it is important to note that the writ petitions are in a manner, a continuation of an on-going dispute wherein the vires of the Meghalaya Mineral Cess Act, 1989 has been put to challenge by an Association under the name of Limestone and Boulder Stone Miners Cum Exporters Forum, in WP(C) No. 454 of 2019, of which the writ petitioners are also members. A Misc. application in the writ petition being Misc. Case No. 244 of 2019, is also pending adjudication, wherein directions have been sought to command the respondents not to insist on the payment of cess retrospectively, pending the decision in WP(C) No.

454 of 2019. Though, undoubtedly connected, the present writ petitions specifically assail only the demand notices, and as such the disposal of the instant writ petitions pending the adjudication of the challenge to the vires of the Act, will not impact, or be considered to have any bearing on WP(C) No. 454 of 2019.

5. Heard learned counsel for the parties.

6. Mr. H.L. Shangreiso, learned counsel for the petitioners submits that the impugned demand notices assailed in these writ petitions, have been issued under Rule 11 (4) of the Meghalaya Mineral Cess Rules, 1989 (hereinafter referred to as MMC Rules, 1989) quantifying the quantity of minerals, cess liability period and arrears of cess in 'Form J', after a unilateral assessment made by the Respondent No. 3 (Director) under Rule 11 (4) without issuing notice under Rule 11 (2) for filing of monthly returns, within 30 days as provided in the MMC Rules, 1989. Learned counsel also contends that the respondent No. 3 by not adhering to the provisions of the Rules, has also violated the principles of natural justice and hence the impugned action and notices are unsustainable in law.

7. Learned counsel submits that the impugned demand notice can never be construed as a valid statutory notice issued under Rule 11(2) in 'Form H', inasmuch as, the requirement on the issuance of the notice under Rule 11(2) is for submission of the returns under Rule 5 in 'Form A', a fact which he contends is absent in the demand notice. Learned counsel submits that a proper notice under Rule 11 (2) was not issued for the simple reason, that the respondent No. 3 had already determined the arrear cess payable, which is mentioned in the second page of the impugned demand notice. He submits therefore the statutory requirement of a notice under Rule 11(2) not having been met, the impugned demand notices are not sustainable in law.

8. The learned counsel then submits that Rule 11(2) and Rule 11(4) are two distinct Rules with different objectives/purposes, which prescribes different procedures and powers. The assessing authority i.e. the Director he submits, exercises quasi-judicial functions, and is bound to adhere to the

procedure as prescribed. He submits that these two Rules lay down two distinct jurisdictions under which the Director is to act and also states the remedy and compliance necessary on the part of the assesse miner or exporter. He contends that the issuance of the impugned demand notices, under the two provisions i.e. under Rule 11(2) and (4) in a form of a composite notice, is misconceived and against the statutory mandate of the MMC Act and Rules.

9. Learned counsel while dwelling on this point, submits that had a proper notice been issued under Rule 11(2) and also opportunity given to file the returns, the amount assessed by the Director, as shown the demand notice purportedly under Rule 11(4) could not have been arrived at, inasmuch as, merely purchase of the challans in advance, does not automatically incur tax liability, unless the mineral is extracted or removed from the mines under Section 3 of the MMC Act, 1989. He further submits that had proper statutory notice under Rule 11(2) been issued upon the petitioners, they could have produced the records and materials to show the exact quantity of minerals extracted and removed from the mines commencing from the tax liability period, less the amount of cess already paid under protest. It is also contended that the mining lease executed by the parties and the State of Meghalaya under the Meghalaya Mineral Concession Rules, 2016 does not mention the fact they were liable to pay cess and further since the commencement of the operation they were never called upon to produce the transit or dispatch challan wherein the payment of cess was indicated. Learned counsel submits that the failure to submit the monthly returns owing to their ignorance, though ignorance of law is not an excuse, however cannot automatically allow the Director to avoid compliance of Rule 11(2) and instead issue a composite demand notice under Rule 11(4) for payment of the arrear cess amounts.

10. Learned counsel in support of his arguments has placed reliance in the case of ***S.K. Bhargava vs. Collector, Chandigarh & Ors***. reported in ***(1998) 5 SCC 170,*** wherein it has been held that the principles of natural justice were not complied with, in the determination of sums due from the defaulter in the context of the Haryana Public Moneys (Recovery of Dues) Act, 1979, as no opportunity was afforded to the alleged defaulter to dispute

the said sum, and that though there was no express provision for opportunity being given, the principles of natural justice must be read into it.

11. Reliance has also been placed on the judgment dated 3rd April, 2020 of the Hon'ble Supreme Court in ***Civil Appeal No. 1008 of 2020*** in the case of ***New Delhi Television Ltd. vs. Deputy Commissioner of Income Tax*** wherein it has been held that the manner of notice, and reasons given did not conform to the principles of natural justice and the assesse did not get a proper and adequate opportunity to reply to the allegations which were then being relied upon by the revenue authorities. The learned counsel has also cited the case of ***Sukhdev Singh & Ors. vs. Bhagatram Sardar Singh Raghuvanshi & Anr***. reported in ***AIR 1975 SC 1331,*** to buttress his submissions of the duty to comply with the principles of natural justice and rules, whenever a man's rights are affected by a decision taken in exercise of statutory powers.

12. In concluding his submissions, the learned counsel submits that the principles of waiver, acquiescence and estoppel as well as laches of delay come in the way of the respondents to claim the arrears in cess as non-submission of monthly returns creates a fresh cause of action. It is also prayed that the writ petitioners be given liberty to approach the respondents and allow them to raise their contentions on the assessment before any action is taken by them for recovery of the alleged arrears in cess. Lastly, it is submitted that the impugned notices being bad in law be set aside and quashed.

13. In reply to the submissions made by the petitioners, Mr. A. Kumar, learned Advocate General, submits at the outset, that the writ petitions are liable to be dismissed on the ground of concealment of material facts, inasmuch as, the writ petitioners have simply disclosed information about the pending writ petition i.e. WP(C) No. 454 of 2019, without disclosing that at least two of the prayers are identical to the instant writ petitions, and further that the prayer in Misc. Application No. 244 of 2019 in the pending writ petition, is similar to the prayer made in the Misc. applications of the instant writ petitions. Learned Advocate General also submits, that second concealment is towards non-disclosure of the fact that this Court in a Coordinate Bench did not grant any interim relief even though

the case was listed on numerous occasions. To substantiate his submissions, the learned counsel has made a chart in tabular form, which is reproduced herein below:

Table showing identical reliefs claimed by the Petitioner		
Prayer in W.P. 454 of 2019	**Prayer in M.C. No.244 of 2019 in W.P. (C) No.454 of 2019**	**Prayer in W.P. No.112 of 2020**
1. To withdraw, recall and otherwise **forbear from giving effect to the Meghalaya Mineral Cess Act, 1988** after adjudging the same as ultra-vires the Constitution.	1. The Respondent Forest Department to release the challan to the members of the Applicants/Writ Petitioners on payment of requisite fee to mine and transport the minor limestone as the existing mining lease agreement.	1. Set aside and quash the impugned demand notice dated 11.2.2020(Annexure-9) issued by Director, Mineral Resource, Govt. of Meghalaya; 2. **Direct the Respondent State not to insist the writ petitioner to submit monthly return in 'Form-A' under Rule 5 of MMC Rules, 1989 for payment of Cess.**
2. **Direct the Respondent State to refund the collected cess to the members of the writ petitioner, including the writ petitioner no.2**, at least with effect the date of filing the writ of (sic) their first representation dated 16th June, 2019. 3. ……. 4. ……..	2. Allow the members of the applicants/writ petitioners to pay the current cess and District Mineral Foundation under protest by **directing the State Respondent to refund the same depending on the final outcome of the writ petition**.	3. **Direct the Respondent State to refund the current cess and DMF paid by the writ petitioner under protest during the pendency of connected W.P.(C) No.454 of 2019**.
	3. The respondent state not be insist on the members of the **applicants/writ petitioners to pay the cess retrospectively until the constitutionality of the impugned Meghalaya Mineral Act, 1988** as well as the Mine and Mineral Development Regulation (Amendment) Act, 2015 are finally adjudicated by this Hon'ble Court in the pending writ petition.	

14. The learned Advocate General submits that the conduct of the petitioners, disentitles them from receiving any equitable relief under the extraordinary writ jurisdiction of this Court, as relief to be granted in writ jurisdiction is a matter of discretion and equity. He submits that the petitioners by not filing returns, are in gross violation of the MMC, Act and Rules 1989, since the commencement of production of limestone on 23.01.2019. In support of his submissions, the learned Advocate General has placed reliance in the case of ***Udyami Evam Khad Gramodyog Welfare Sanstha & Anr. vs. State of Uttar Pradesh & Ors***. reported in ***(2008) 1 SCC 560, K.D. Sharma vs. Steel Authority of India Limited & Ors.*** reported in ***(2008) 12 SCC*** and in the case of ***M. Lilly vs. The District Collector, Tiruvallur District, Tiruvallur W.A. No. 367 of 2017 (2017 SCC Online Mad 31311***). The aforesaid judgments he urges, are all on the subject of writ remedy being an equitable one, and persons seeking relief should not suppress any material of facts and should come with clean hands before the Court.

15. The learned Advocate General then submits that the fact that the vires of a law has been challenged, will not make that law cease to exist, and it continues to operate, till such time orders are passed to the contrary and it is set aside. The learned counsel submits that the writ petitioners therefore, cannot take the plea that they are not liable to pay cess on account of the challenge to the constitutional validity of the Meghalaya Mineral Cess Act, 1988 and the Rules of 1989 made thereunder. In this regard, on the principles of the constitutionality of enactments, the learned counsel has placed reliance on the following judgments, ***People's Union for Civil Liberties & Anr. vs. Union of India & Ors.*** reported in ***(2004) 2 SCC 476*** and ***Natural Resources Allocation, In Re, Special Reference No. 1 of 2012*** reported in ***(2012) 10 SCC 1***. Learned counsel further submits that no direction can be sought contrary to prevailing Acts and Rules, as has been made by the writ petitioners, who have prayed for directions to command the State respondents to not make a demand, which is in violation of the statutory provision as laid down. To support his contentions, the learned counsel has relied on the following decisions; ***Maharshi Dayanand University vs. Surjeet Kaur*** reported in ***(2010) 11 SCC 159, State of Punjab & Ors. vs. Renuka Singla***

& Ors. reported in ***(1994) 1 SCC175*** and ***Karnataka State Road Transport Corporation vs. Ashrafulla Khan & Ors.*** reported in ***(2002) 2 SCC 560***.

16. Rebutting the submissions of the writ petitioners on the plea of ignorance of law, the learned Advocate General submits, that it is incorrect on the part of the writ petitioners to contend that they were not aware of their liability to pay cess under the MMC Act, 1988, and points out that the writ petitioners themselves have stated in their writ petitions, about their representation submitted to the Chief Minister, wherein they have expressed their inability to pay the cess. The learned counsel submits that the writ petitioners had complete knowledge of their liability, and it is in this context, that they have paid cess amounts on the periods commencing from 31.01.2020, except for the writ petitioner in WP(C) No. 115 of 2020 who has not annexed any challan showing payment but has stated to have paid the same in para 16 of his writ petition, and as such the ground of ignorance as pleaded by the petitioners on the liability cannot be accepted. The learned counsel has cited the decision in the case of ***The Swadeshi Cotton Mills Co. Ltd. vs. The Government of U.P. & Ors.*** reported in ***(1975) 4 SCC 378*** wherein it has been held that ignorance of law is no excuse. Reliance has also been placed in the case of ***State of A.P. & Ors. vs. Twin City Jewellers Assn. & Ors.*** reported in ***(2005) 13 SCC 552***on this point.

17. On the question, as to whether the composite nature of notices violated the procedure prescribed by the MMC Act, 1989, and whether there was any violation of the principles of natural justice, the learned Advocate General contends that the notice required the petitioner to file returns in 'Form A' and the requirement of show cause format mentioned in 'Form H', is only limited to filing of returns. Learned counsel submits that the notice refers to the period, and the quantity is also mentioned therein, and as such the requirement of 'Form H' has been fulfilled, and contends that the non-mentioning of the term 'Form H' in the notice, will not vitiate the notice in any manner. Learned counsel contends that the knowledge of the contents of the notice is the requirement of law, and as such, the writ petitioners cannot plead that they have no knowledge of the period or their liability. He then further submits that the demand notices to all the writ petitioners were issued between 11.02.2020 to 27.02.2020, and it was only after a period of about a

month, that the writ petitioners have approached this Court. He submits that this clearly illustrates the fact that the writ petitioners did not comply with the requirement of filing the returns in 'Form A' as per the Rules of 1989, which as per Rule 11(2) requires that the returns be filed within a period of one month, which in turn made them liable to be proceeded under Rule 11 (4) after the lapse of one month. Learned counsel contends that therefore in this backdrop, there has been no violation of the principles of natural justice. It is also argued by the learned counsel, that in fact and substance, the only ground assigned towards the non-payment of cess by the writ petitioners, is the pendency of WP(C) No. 454 of 2019 which he submits is untenable in law. He also submits that the application and receipt of transport challans for a specified quantity of minerals, extracted by the writ petitioners, positively indicates the quantity of production of minerals by the petitioners.

18. The learned Advocate General has also drawn to the attention of this Court to the fact that the cess which is being collected, is in public interest, with 80% of the collection earmarked for primary education and 20% for development of mining regions, and that the non-payment of the cess by the petitioners, amounts to an evasion of social responsibility on their part. He further submits that the principles of taxation and requirement of notice as held by the Hon'ble Supreme Court, cannot be invalidated for mere non-adherence to procedural formality. Learned counsel in this context has placed reliance on the case of ***Dharampal Satyapal Limited vs. Deputy Commissioner of Central Excise, Gauhati & Ors***. reported in ***(2015) 8 SCC 519 , MC Mehta vs. Union of India & Ors.*** reported in ***(1999) 6 SCC 237 and The Chairman Board of Mining Examination and Chief Inspector of Mines, & Anr.*** reported in ***(1977) 2 SCC 256***.

19. The learned Advocate General in conclusion reiterates his submissions that there is no patent infirmity in the proceedings, and the issuance of the impugned notices and the process in question, is not vitiated in any manner, so as to render it arbitrary or considered to be in blatant violation of statutory rules. He submits that the petitioners being well aware of their liabilities, cannot escape the same by resorting to repeated writ petitions. He therefore, prays that the writ petitions be dismissed.

20. Having heard learned counsels for the parties, and in consideration of all the arguments advanced and the connected materials placed before the Court, it is seen that the prayers of the writ petitioners is for quashing of the demand notices, not to insist on filing of monthly returns in 'Form A' under Rule 5 of the Meghalaya Mineral Cess Rules, 1989 and for refund of current cess and District Mineral Foundation Fund (DMF) paid under protest during the pendency of WP(C) No. 454 of 2019 (wherein the vires of the Cess Act has been challenged). The petitioners have assailed the impugned notices, contending that the same are in violation of the Rules, 1989, apart from the fact that the challenge to the validity of the Cess Act, 1988, is pending adjudication.

21. In this context, before coming to a final appreciation of the matter at hand, it would be apposite for the purposes of the instant case, to quote hereunder, the relevant sections and Forms of the Meghalaya Minerals Cess Rules, 1989 :-

"MEGHALAYA MINERAL CESS RULES, 1989*

CHAPTER I

Preliminary

5. Submission of monthly returns. (1) Every lessee and every person referred to in sub-R. (2) of R. 4 shall submit in duplicate the monthly returns in Form 'A' or Form 'B', as the case may be, to the Director so as to reach him on or before the fifteenth day of the month following the month to which the returns pertain:

Provided that the Director may permit any person referred to in sub-R. (2) of R. 4 to submit the returns in Form 'B' for a consolidated period not exceeding twelve months. The consolidated returns shall reach the Director not later than the last day of the month following the period to which the returns pertain.

(2) In case no mineral is removed during the month or period, 'nil' returns shall be submitted accompanied by a duly signed certificate to that effect within the time prescribed in this rule.

11. Final assessment of the cess payable. (1)……..…. ……..

(2) If the Director is not satisfied with the returns submitted under R. 5 or if no returns are submitted he shall issue a notice in Form 'H' requiring the lessee or the other person referred under sub-R. (2) of R. 4 to submit the returns or revised returns required in Form 'A' or, as the case may be, Form 'B' within a period of thirty days from the date of issue of the notice.

(3)……

(4) If no returns are submitted within the time specified in the notice issued under sub-R. (2) the Director shall assess the amount of cess due and payable to Government on the basis of records or other information available to him and intimate the lessee or the other person referred to in sub-R. (2) of R. 4 in Form 'J' for payment of the sum within a period of sixty days from the date of issue of the notice.

FORM H

[See (Rule 11 (2)]

Notice to the lessee or person referred to in sub-R. (2) of R. 4

To,

… … … … …
… … … … …

Whereas I am not satisfied with the Returns submitted by you in Form 'A'/'B' of the Meghalaya Mineral Cess Rules, 1989 vide letter No…… dated .. .. in respect of …. .. … (name of the mining lease in case of leases) for… .. ……. (minerals) for the period ending… … … …;
You are hereby directed to submit revised returns in Form 'A'/'B' for the period ending …….. …. ….. on or before .. ..
OR

Whereas you have not submitted any returns in Form 'A'/Form 'B' as required under R. 5 of the Meghalaya Mineral Cess Rules, 1989 for …
… … … (minerals) for the period ending… .. …. …
…; you are hereby directed to submit the required returns on or before …… .. ..

In the event of your failure to comply with this notice I shall proceed to assess the amount of cess due and payable by you from records in my possession without further reference to you.

Seal of the Director
No. … … …
Date … … … Director
Place … … …

FORM J

[See Rule 11 (4)]

Demand notice

To,

.. ..
.. ..

Whereas no returns as required under R. 5 read with R. 11 (2) of the Meghalaya Mineral Cess Rules, 1989 have been submitted by you in respect of… … … …(name of mining lease in case of lessee) for……
… … …,(minerals) for the month(s)/period… … …, I have, from records and other information available with me, assessed the amount of cess due and payable by you as detailed below not later than.. ..
.. ..failing which the amount will be recoverable from you as arrear of land revenue.

(a) Quantity of.. .. .. ..(minerals) .... .. … …. … …… M. tonnes.
(b)Amount of cess due and payable

…. …. …per M.T.Rs… …… ……. ….. …… …..
(c) Deduct amount already paid by you Rs… … ... …..
vide Treasury Receipt No.. .. ..dated.. .. .. ……
(d)Net amount due and payable Rs….. … … … …….
Seal of the Director
No… … … …
Date … … … Director
Place … … …"

22. The scheme of the Rules as can be discerned from above, is that it stipulates firstly, in Rule 5 the submission of monthly returns by a lessee or persons, referred to in Rule 4(2), who are to maintain a register to record the quantities of minerals removed. On non-filing of returns, recourse is to be taken to Rule 11(2) wherein the Director is enjoined, to issue notice in 'Form H' requiring the lessee to submit the returns within a 30-day period. Rule 11(4) comes into play, in the event no returns are submitted within the time specified, and the power then lies with the Director to assess the amount of cess payable on the basis of records, or other information available and intimate the lessee or other persons in 'Form J', for payment of the assessed sum within a period of 60 days. Thereafter, on still no payment being made, the provisions of Section 7 of the parent Act of 1988, will be applicable, which for convenience is quoted herein below:

"Penalty for non-payment of tax	***7***	***If any tax payable under this Act is not paid within such period as may be prescribed it shall be deemed to be in arrears and the authority prescribed in this behalf may impose on the person extracting or removing the minerals a penalty not exceeding the amount of tax in arrears;*** ***Provided that before imposing the penalty such person shall be given an opportunity of being heard and if the said authority is satisfied that the default was for good and sufficient reason, no penalty shall be imposed under this section."***

23. As noted earlier, this Court will confine itself only to the legality of the impugned notices, as to whether the procedure adopted in the manner of their issuance and their contents thereof, can be said to be in violation of statutory requirements and also the principles of natural justice. The

composite notices under Rule 11(2) and (4) as served upon the petitioners, in this case WP(C) No. 112 of 2020 is reproduced herein under:-

"GOVERNMENT OF MEGHALAYA
DIRECTORATE OF MINERAL RESOURCES
SHILLONG.

No. DMR/R/3170/2020/4 Dated Shillong, the 11.02.2020

To,

Shri. Marbat Dohkrut,
Ri-Kaleng, Sohbar,
East Khasi Hills

Sub: Demand Notice

Sir,

Whereas no returns as required under Rule 5 read with Rule 11(2) of the Meghalaya Mineral Cess Rule (MMCR), 1989, have been submitted by you, Demand Notice in Form "J" of MMCR, 1989 along with the due statement for necessary payment is enclosed herewith for necessary compliance. You are also directed to furnish monthly return in Form "A" of the aforesaid Rule (copy enclosed).

Enclo: As above

Yours faithfully,

(Arunkumar Kembhavi, IAS)
Director of Mineral Resources
Meghalaya ::: Shillong.

Memo. No.DMR/R/3170/2020/4-A. Dated Shillong, the 11.02.2020

Copy to:-

The Divisional Forest Officer, East Khasi Hills &Ri-Bhoi (T) Division, Shillong.

Director of Mineral Resources
Meghalaya ::: Shillong.

FORM 'J'
[See rule 11 (4)]
DEMAND NOTICE

To

Shri. Marbat Dohkrut,
Ri-Kaleng, Sohbar,
East Khasi Hills

Whereas no returns as required under rule 5 read with rule 11 (2) of the Meghalaya Minerals Cess Rules, 1980 have been submitted by you in respect of Shri. Marbat Dohkrut, Ri-Kaleng, Sohbar, East Khasi Hills for Limestone for the month/ period from 28.01.2019 till date. I have from

records and other information available with me, assessed the amount of cess due and payable by you as detailed below not later than 60 (sixty) days from the date of issue of this office failing which the amount will be recoverable from you as arrear of land revenue.

(a) Quantity of Limestone: 53100M.T.
(b) Amount of cess due and payable 60/- per M.T. Rs 3186000/-
(c) Deduct amount already paid by Rs. Nil you vide treasury receipt No. Nil dated Nil
(d) Net amount due and payable Rs. Nil

Seal of the Director

Number _____
Date _____ Director
Place _____"

24. A perusal of the above quoted impugned notices reflect that on the same day itself, a composite notice both under Rule 11(2) and 11 (4) was issued. The contents in the first part, read that the petitioners have been directed to make the payment as per the demand notice in 'Form J', while at the same time asked to furnish monthly returns as per 'Form A' as required by Rule 11(2). It is noted that there is no specific direction for furnishing the returns as per 'Form H' which stipulates the periods for the returns, and the date for submission. The second part of the notice, in the form of Rule 11(4) quantifies the quantity of limestone and the amount of cess due, which has been assessed by the respondent No. 3, from records and other information available, raising a demand for payment as per 'Form J'. As observed earlier, the writ petitioners have strongly contended that the notice was bad in law, inasmuch as, it was not in the form prescribed by the Rules. Contentions have also been raised, that the infraction of the stipulations, has resulted in the denial of adequate opportunity being afforded to the writ petitioners to present their case before the Assessing Authorities.

25. A close scrutiny of the impugned notices, will no doubt reveal that there are discrepancies in the procedure adopted, and also the language used therein. However, in keeping with an overall view, we have to weigh the facts, and keep in mind as to whether this non-adherence to procedure, in the manner of issuance of notice, will be fatal to the case of the respondents. In this regard, the facts surrounding the entire matter need to be taken into consideration. The

first prominent fact that cannot escape scrutiny, is that the writ petitioners are parties in WP(C) No. 454 of 2019, wherein the vires of the MM Cess Act, 1988, has been put to challenge, and has also been taken as one of the main grounds in the instant writ petitions for non-payment of cess. This conclusively proves the fact that the writ petitioners, are well aware of their liability to submit returns and to pay the requisite cess. Another important factor that is to be considered, is the payment of the current cess amount by the writ petitioners to the respondents, which reinforces the above noted fact of the petitioners knowledge as to their liability under the MMC Rules. Though, for the failure of filing of the returns, a formal notice ought to have been served upon the writ petitioners, fault can also be pinned upon the writ petitioners, inasmuch as, they were duty bound as per the Act and Rules, to file their returns, a fact which by the actions show that they were well aware of, and had even filed a writ petition to avoid implementation of the same.

26. The factum of knowledge and awareness of the writ petitioners as to their liability to pay cess, therefore cannot be denied. As such, the stand and pleading taken that there has been violation of the principles of natural justice in not issuing prior notice only under Rule 11(2) before issuance of notice under Rule 11(4), though an attractive argument, however, in the fact and circumstances of the present case, will in our opinion, not amount to denial of reasonable opportunity, as the outcome or conclusion will not be substantially different, even if the petitioners had been afforded opportunity. Compounded to this, is the fact that within 30 days of the notice, no returns as per 'Form A', nor any representations, were filed by the writ petitioners, but instead the instant writ petitions assailing the impugned notices, were filed directly before this Court, and that too around 30 days after their issuance, which corresponds to the notice period under the Rules. The element of notice, and its denial as projected by the writ petitioners in the backdrop of these circumstances, therefore loses its significance. It can be safely concluded therefore, that the absence of the word 'Form H' in the notice under Rule 11(2) will not render the proceedings vitiated or invalid. Further the non-filing of returns by the petitioners in 'Form A' within 30 days, rendered them liable to be proceeded with under Rule 11(4). As such, though there might be some procedural infirmity, looking at the totality of the objectives of the process

and the proceedings itself, it cannot be held that the same is vitiated to render the notices void or illegal.

27. In this context, it will be expedient to refer to the cited judgment in the case of ***Dharampal Satyapal Limited vs. Deputy Commissioner of Central Excise, Gauhati & Ors***. reported in ***(2015) 8 SCC 519*** on the point exclusion or inapplicability of the principles of natural justice in Excise and Taxation matters the relevant paragraphs are quoted herein below:-

> ***"38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straightjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.***
>
> ***39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straightjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing "would make no difference" – meaning that a hearing would not change the***

ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in Malloch v. Aberdeen Corpn., who said that: (WLR p. 1595: All ER p. 1294)

> *"… A breach of procedure...cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain. "*

Relying on these comments, Brandon L.J. opined in Cinnamond v. British Airports Authority that: (WLR p. 593: All ER p. 377)

> *"… no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing."*

In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing.

41. In ECIL, the majority opinion, penned down by Sawant, J., while summing up the discussion and answering the various questions posed, had to say as under qua the prejudice principle: (SCC pp. 756-58, para 30)

> *"30. Hence the incidental questions raised above may be answered as follows:*
>
> * * *
>
> *(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside*

because the report is not furnished to him, in some cases the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an 'unnatural expansion of natural justice' which in itself is antithetical to justice."

42. So far so good. However, an important question posed by Mr. Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. This was so held by the English Court way back in the year 1943 in General Medical Council v. Spackman. This Court also spoke in the same language in Board of High School and Intermediate Education v. Chitra Srivastava, as is apparent from the following words: (SCC p. 123, para 7)

> ***"7. The learned counsel for the appellant, Mr. C.B. Agarwala, contends that the facts are not in dispute and it is further clear that no useful purpose would have been served if the Board had served a show-cause notice on the petitioner. He says that in view of these circumstances it was not necessary for the Board to have issued a show-cause notice. We are unable to accept this contention. Whether a duty arises in a particular case to issue a show-cause notice before inflicting a penalty does***

not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed."

43. In view of the aforesaid enunciation of law, Mr. Sorabjee may also be right in his submission that it was not open for the authority to dispense with the requirement of principles of natural justice on the presumption that no prejudice is going to be caused to the appellant since judgment in R.C. Tobacco had closed all the windows for the appellant.

44. At the same time, it cannot be denied that as far as Courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. This was so clarified in ECIL itself in the following words: (SCC p. 758, para 31)

> *"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as it regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."*

45. Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority

to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in R.C. Tobacco.

46. To recapitulate the events, the appellant was accorded certain benefits under Notification dated 8-7-1999. This Notification stands nullified by Section 154 of the 2003 Act, which has been given retrospective effect. The legal consequence of the aforesaid statutory provision is that the amount with which the appellant was benefitted under the aforesaid Notification becomes refundable. Even after the notice is issued, the appellant cannot take any plea to retain the said amount on any ground whatsoever as it is bound by the dicta in R.C. Tobacco. Likewise, even the officer who passed the order has no choice but to follow the dicta in R.C. Tobacco. It is important to note that as far as quantification of the amount is concerned, it is not disputed at all. In such a situation, issuance of notice would be an empty formality and we are of the firm opinion that the case stands covered by "useless formality theory".

47. In Escorts Farms Ltd.v. Commr., this Court, while reiterating the position that rules of natural justice are to be followed for doing substantial justice, held that, at the same time, it would be of no use if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. It was so explained in the following terms: (SCC pp. 309-10, para 64)

> *"64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our*

discretionary powers under Article 136 of the Constitution of India."

48. Therefore, on the facts of this case, we are of the opinion that non-issuance of notice before sending communication dated 23-6-2003 has not resulted in any prejudice to the appellant and it may not be feasible to direct the respondents to take fresh action after issuing notice as that would be a mere formality."

28. Another judgment in the case of ***The Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr. vs. Ramjee*** reported **1977 2 SCC 256** at para 15, which is quoted herein below also covers this aspect;

"15. These general observations must be tested on the concrete facts of each case and every miniscule violation does not spell illegality. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures."

29. Apart from the above, it is settled law that no direction can be sought commanding the respondents to act contrary to prevailing statute or rules. The prayer of the writ petitioners to direct the respondents not to insist the submission of monthly returns in 'Form A' under Rule 5 of the Rules, 1989 is unsustainable. In the judgment of ***Maharshi Dayanand University vs. Surgeet Kaur*** reported in **(2010) 11 SCC 159**, the Hon'ble Supreme Court in para 11 has held as under:

"11. It is settled legal proposition that neither the court nor any tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision. The Court has no competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions."

30. The plea of the writ petitioners, in seeking refund of the current cess already paid during the pendency of WP(C) No. 454 of 2019 is also unsustainable in law. Challenge to the vires of an enactment cannot cease or suspend the operation or implementation of such an enactment unless the same is set aside in accordance with law. As held in ***Natural Resources***

Allocation, In Re, Special Reference No. 1 of 2012 reported in ***(2012) 10 SCC 1 "One of the most profound tenets of constitutionalism is a presumption of constitutionality assigned to each legislation enacted".***

31. The judgments relied upon by the petitioners though correct in their own perspective, stand on a different footing from the instant cases, inasmuch as, as observed, the petitioners herein were well aware of their liability. On the contentions raised by the respondents, with regard to the identical reliefs claimed by the writ petitioners in the prayers made in WP(C) No. 454 of 2019, Misc. Case No. 244 of 2019 in WP(C) No. 454 of 2019 and the present batch of petitions, as has been noted earlier, the issues being dealt with in this judgment will not intrude or have a bearing on WP(C) No. 454 of 2019 wherein there is a challenge to the vires of the Act, but in our opinion will have a limited impact only on Misc. application No. 244 of 2019 which has sought for a direction not to insist for payment of cess until the constitutionality of the Meghalaya Mineral Cess Act, 1988 was adjudicated upon.

32. As such, from the discussions and findings recorded above, the impugned proceedings and notices cannot be said to be vitiated, for not strictly adhering to procedure prescribed, as also the other prayers made in the writ petitions which are found to be unsustainable in law. However, an aspect which does not escape our notice, is the fact that the MMC Rules 1989 do not contain a provision for appeal against an order of assessment made under Rule 11(4) of the Rules, and an opportunity of being heard, is only provided before the imposition of penalty for non-payment of tax or cess under Section 7 of the MMC Act, 1988. In our considered opinion, though this point has not been specifically pleaded, it was urged in the course of hearing, and reliance placed by the learned counsel for the petitioner in the case of ***S.K. Bhargava vs. Collector, Chandigarh & Ors***. reported in ***(1998) 5 SCC 170.*** Liberty was also prayed to allow the petitioners to represent before any further action is taken against them, in connection with the arrears in cess. This point in the interest of justice requires some deliberation.

33. The order of assessment made under Rule 11(4) no doubt is an ex parte assessment, made on the failure of the writ petitioners to submit returns. In the absence of a provision to appeal against such assessment, or for that matter to prefer an appeal against any exercise of power under a statute by an authority the Hon'ble Supreme Court in the case of ***Organo Chemical Industries & Anr. vs. Union of India & Ors.*** reported in ***(1979) 4 SCC 573*** at para 15 has held as follows:-

> ***"15. In this connection, it was also urged that the absence of any provision for appeal, leaves the defaulting employer with no remedy. The conferral of arbitrary and uncontrolled powers on the Regional Provident Fund Commissioner to quantify damages, it is said, without a corresponding right of appeal or revision, makes the provision contained in Section 14-B per se void and illegal and it is liable to be struck down on that ground. We are afraid the contention is wholly devoid of substance. Mere absence of provision for an appeal does not imply that the Regional Provident Fund Commissioner is invested with arbitrary or uncontrolled power, without any guidelines. The conferral of power to award damages under Section 14-B is to ensure the success of the measure. It is dependent on existence of certain facts; there has to be an objective determination, not subjective. The Regional Provident Fund Commissioner has not only to apply his mind to the requirements of Section 14-B but is cast with the duty of making a "speaking order", after conforming to the rules of natural justice." (Emphasis supplied)***

Another ruling that comes to mind on this point, is the judgment rendered in the case of ***Chinta Lingam & Ors. vs. Government of India & Ors. and M/s Guggila Ramaiah etc. vs. The Union of India & Ors. etc***. reported in ***(1970) 3 SCC 768*** wherein in para 4, the extract of which is quoted herein below, the Hon'ble Supreme Court held as follows:-

> ***"4…….We consider that there is no bar to any of the aggrieved parties approaching the State Government by means of a representation for a final decision even if the matter has been dealt with by the District Collector or the Deputy Commissioner of Civil Supplies in the first instance and the permit has been refused or wrongly withheld by those officers. In these circumstances the absence of a provision for appeal or revision can be of no consequence. At any rate it has been pointed out***

in more than one decision of this Court that when the power has to be exercised by one of the highest officers the fact that no appeal has been provided for is a matter of no moment; ……" [Emphasis supplied]

The analogy of the cited case of ***S.K. Bhargava vs. Collector, Chandigarh & Ors***. reported in ***(1998) 5 SCC 170,*** in paras 8 and 9, which are reproduced herein below will also have a bearing in the formulation of this point in the present case:-

"8. It is clear from the perusal of the above-quoted section that before a certificate can be issued by the Managing Director under sub-section (2) of Section 3, he must determine the "sum due" from the defaulter as enjoined upon him by Section 3(1) (b). It is difficult to appreciate the contention of the learned counsel for the respondent Financial Corporation that any such determination can take place without notice to the defaulter. The jurisdiction of the civil courts to go into the question as to what is the amount due is expressly ousted by sub-section (4) of Section 3. In its place, the power has been given to the Managing Director under Section 3 (1) (b) to determine as to what is the amount due from the defaulter. There can be no doubt that any such determination by the Managing Director will result in civil consequences ensuing. The determination being final and conclusive, would have the result of the passing of a final decree, inasmuch as the defaulters from whom any amount is found to be due, would become liable to pay the amount so determined and the Collector will have the right to recover the same as arrears of land revenue.

9. In our opinion, even though Section 3 does not expressly provide for an opportunity being given to the alleged defaulter to explain as to whether any amount is due or not but in view of the nature of the said provision, the principles of natural justice must be read into it. The requirement of determination of the sum due by the Managing Director must be regarded as providing for the Managing Director hearing the alleged defaulter before coming to the conclusion as to what is the sum due. The very use of the word "determine" and "sum due" implies that there may be a lis between the parties and they have to be heard before a final conclusion is arrived at by the Managing Director. It is not a mere claim of the Corporation which is forwarded to the Collector for realisation, but it is the "sum due" as determined by the Managing Director which alone is recoverable. As already observed, this determination

cannot be done without notice to the alleged defaulter." [Emphasis supplied]

34. From the discussions above, what follows is that though the assessment has been done by the competent authority, which is final as per the scheme of the MMC Rules, 1989, and the presumption is always that public officials discharge their duties in accordance with law, it would however, be just and proper and in the interest of justice if the writ petitioners be allowed to make a representation before the respondent No. 3, as to the assessment of cess made in the demand notices under Rule 11(4) before any further action that may follow, in proceedings under Section 7 of the Meghalaya Mineral Cess Act, 1988.

35. The writ petitioners are therefore allowed to make representations within 10(ten) days from the date of this order and the respondent No. 3 to decide the same preferably within the period of 2(two) weeks thereafter on receipt of the said representations.

36. For the reasons and circumstances discussed above, these writ petitions accordingly stand disposed of. No order as to costs.

(W. Diengdoh)
Judge

(H.S. Thangkhiew)
Judge

Meghalaya
26.06.2020
"V. Lyndem PS"