CASE NO.:
Appeal (civil) 5481 of 2002

PETITIONER:
Assistant Director of Mines & Geology

RESPONDENT:
Deccan Cements Ltd. & Anr.

DATE OF JUDGMENT: 25/01/2008

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
JUDGMENT
O R D E R
(With C.A. No. 5483 of 2002, C.A. No. 5484 of 2002, C.A. No.5487 of 2002, SLP (C) No.10887-10888/2002, SLP (C) No.10889-10891/2002, SLP (C) No.10892-10894/2002, SLP (C) No.10895-10896/2002)

Dr. ARIJIT PASAYAT, J.

1. During the hearing of these appeals reliance was placed by the respondents in C.A. No.5481/2002 on a decision of this Court in District Mining Officer and Ors. v. Tata Iron and Steel Co. and Anr. (2001 (7) SCC 358). Appellant in the said appeal placed reliance on Somaiya Organics (India) Ltd. and Anr. v. State of U.P. and Anr. (2001 (5) SCC 519).

2. High Court in the order impugned relied on District Mining Officer\022s case (supra) to hold that though levy upto 4.4.1991 was permissible, no collection of cess could be made.

3. In District Mining Officer\022s case (supra) it was, inter-alia, observed as follows:

\023\005.We do find considerable force in the aforesaid submission, as in our view, the interpretation we have already given to the Validation Act was the real intention of Parliament and it never intended to confer a right of collection of cess. In agreement with the conclusion arrived at by the Patna High Court, we hold the Validation Act to be valid, but such validated Acts do not authorize any fresh levy or collection in respect of liabilities accrued prior to 4.4.1991, though it prohibits refund of the collection already made prior to that date.\024

4. It is to be noted that in the said case the validity of the cess and other taxes under the Cess and Other Taxes on Minerals (Validation) Act, 1992 (hereinafter referred to as the \021Validation Act\022) was under consideration. This Court held that the Validation Act did not suffer from any invalidity. Having observed so, the aforesaid conclusions were arrived at regarding impermissibility for collection not already made. In Somaiya Organics (India)\022s case (supra) the conceptual difference between \023levy\024 and \023collect\024 was noted in the

following words :
\02329. Reading the two paras 89 and 90 together
it does appear that this Court regarded the
declaration of the provisions being illegal
prospectively as only meaning that if the
States had already collected the tax they would
not be liable to pay back the same. It is the
States which were protected as a result of the
declaration for otherwise on the conclusion
that the impugned Acts lacked legislative
competence the result would have been that
any tax collected would have become
refundable as no State could retain the same
because levy would be without the authority of
law and contrary to Article 265 of the
Constitution. At the same time, it was clearly
stipulated that the States were restrained from
enforcing the levy any further. The words used
in Article 265 are \023levy\024 and \023collect\024. In taxing
statute the words \023levy\024 and \023collect\024 are not
synonymous terms (refer to CCE v. National
Tobacco Co. of India Ltd. (1972 (2) SCC 560) at
p.572), while \023levy\024 would mean the
assessment or charging or imposing tax,
\023collect\024 in Article 265 would mean the
physical realisation of the tax which is levied
or imposed. Collection of tax is normally a
stage subsequent to the levy of the same. The
enforcement of levy could only mean
realisation of the tax imposed or demanded.
That the States were prevented from recovering
the tax, if not already realised, in respect of the
period prior to 25-10-1989 is further evident
from para 90 of the judgment. The said para
shows that as on the date of the judgment, for
the period subsequent to 1-3-1986 the
demand of the Central Excise Department on
the alcohol manufactured was over Rs.4
crores. The Court referred to its orders dated
1-10-1986 and 16-10-1986 whereby the State
Government was permitted to collect the levy
on alcohol manufactured in the Company\022s
distilleries. With respect to the said amount of
Rs.4 crores, it was observed that \023it is,
therefore, necessary to declare that in future
no further realisation will be made in respect
of this by the State Government from the
petitioners\024. The implication clearly was that if
out of Rs.4 crores the State Government had
collected some levy the balance outstanding
cannot be collected after 25-10-1989. \023

5. It appears in District Mining Officer\022s case (supra) this
Court was of the view that the levy may have been validated
and that did not authorize collection. It is to be noted that
there are different stages in the matter of imposition of tax or
cess. First is the source of power for levying tax or cess as the
case may be. The second is the actual levy by an adjudication
or assessment order. Sometimes, the quantification of the
amount payable is done in the adjudication/assessment order.
Finally, comes the question of collection. That being so,
collection is a natural corollary of the levy. It is inconceivable
that the levy is valid but collection can be held to be
impermissible. This is an irreconcilable situation.

6. We, therefore, find it difficult to agree with the view expressed in District Mining Officer\022s case (supra) regarding impermissibility of collection in the portion quoted above.

7. The matter can be looked from another angle. Supposing somebody has paid the taxes and in other words there has been collection of the amount levied. There may be another person who may not have paid it. The latter person cannot be placed at a better footing than the former one.

8. We, therefore, refer the matter to a larger bench to test the correctness of the conclusions that the levy was permissible by the Validation Act, but amounts which have not already been collected, cannot be collected. The records may be placed before Hon\022ble the Chief Justice of India for appropriate directions.

9. Ordered accordingly.

JUDIS