HIGH COURT OF MADHYA PRADESH : JABALPUR

(Full Bench)

Writ Appeal No.202/2012

M/s Vandey Matram Gitti Nirman ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others ..... Respondents

*****

Writ Appeal No.237/2012

Rajendra Granite Chandrapura ..... Appellant

Vs.

Madhya Pradesh East Zone Electricity
Distribution Company Ltd. & others ..... Respondents

*****

Writ Appeal No.247/2012

M/s Krishna Minerals & Industries New
Industrial Area ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others ..... Respondents

*****

Writ Appeal No.249/2012

M/s Bundelkhan Associates Donga ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others ..... Respondents

*****

Writ Appeal No.250/2012

M/s Sharda Minerals and Industries Donga ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others ..... Respondents

*****

Writ Appeal No.252/2012

M/s Fair Dea Minerals Kari Road Alampura ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others ..... Respondents

*****

Writ Appeal No.257/2012

Shraddha Stone Crusher ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others ..... Respondents

*****

Writ Appeal No.258/2012

M/s Pali Stone Crusher ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others ..... Respondents

*****

Writ Appeal No.259/2012

Akhil Kumar Jaiswal ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others ..... Respondents

*****

Writ Appeal No.260/2012

Ghai Stone Crusher ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others ..... Respondents

*****

Writ Appeal No.261/2012

Prathihar Stone Crusher ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others ..... Respondents

*****

Writ Appeal No.278/2012

M/s Eastern Minerals ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others ..... Respondents

*****

Writ Appeal No.313/2012

M/s Guru Arjun Minerals ..... Appellant

Vs.

State of Madhya Pradesh & others ..... Respondents

*****

Writ Appeal No.321/2012

Shri Ram Stone Crusher ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others .....Respondents

*****

Writ Appeal No.344/2012

M/s Jai Bajrang Gramoudyog ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others .....Respondents

*****

Writ Appeal No.345/2012

M/s Jai Jagdambey Stone ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others .....Respondents

*****

Writ Appeal No.346/2012

Balaji Stone Crusher ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others .....Respondents

*****

Writ Appeal No.347/2012

Jai Hanuman Stone Crusher ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others .....Respondents

*****

Writ Appeal No.348/2012

M/s Radhey Radhey Granite ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others .....Respondents

*****

Writ Appeal No.349/2012

Rahi Granite ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others .....Respondents

*****

Writ Appeal No.477/2012

M/s Mahamaya Stone Crushers ..... Appellant

Vs.

M. P. State Electricity Board & others .....Respondents

*****

Writ Appeal No.587/2012

M/s Trilok Singh Khanduja Stone Crusher ..... Appellant

Vs.

Madhya Pradesh Poorv Kshetra
Vidyut Vitran Co. Ltd. & others .....Respondents

*****

Writ Appeal No.832/2012

M/s Ram Kunwar Construction Pvt. Ltd. ..... Appellant

Vs.

The State of Madhya Pradesh & others .....Respondents

*****

Writ Appeal No.260/2013

Abhitap Kumar Shukla ..... Appellant

Vs.

Chairman Cum Managing Director & others .....Respondents

*****

Writ Appeal No.261/2013

SNS (Minerals) Limited PO Maihar ..... Appellant

Vs.

Chairman Cum Managing Director & others .....Respondents

*****

Writ Appeal No.262/2013

M/s Balaji Stone Crusher ..... Appellant

Vs.

Chairman Cum Managing Director & others .....Respondents

*****

Writ Petition No.51/2014

M/s Balaji Stone Crusher, Satna ..... Petitioner

Vs.

The State of Madhya Pradesh & others .....Respondents

*****

Writ Appeal No.79/2016

M/s Adarsh Stone Company (Crusher) ..... Appellant

Vs.

The State of Madhya Pradesh & others .....Respondents

Coram:

Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice
Hon'ble Shri Justice Sujoy Paul,
Hon'ble Shri Justice Vijay Kumar Shukla

Presence:

Shri Sanjay Agrawal, Shri Ashok Agrawal and Shri Anuj Agrawal, Advocates for the appellants.

Shri Shekhar Sharma, Additional Advocate General for the respondents/ State.

Shri Mukesh Kumar Agrawal and Shri A.P. Shroti, Advocates for the respondents-Company.

Whether approved for reporting : Yes

***Law laid down*:**

Question No.(i) is answered in the negative by holding that rate of duty provided under Entry 3 of Part-B of the Table under Section 3(1) of the M.P. Electricity Duty Act, 1949 as applicable to mines, cannot be applied and enforced upon those stone crushing units which are only carrying on stone crushing activity whether or not situated in or adjacent to a mine. To put it differently, if a stone crushing unit is not exclusively occupied by the owner of the mine and it is not belonging to a mine, then such stone crushing unit would not fall within the ambit and scope of Explanation (b) of Part B of Section 3(1) of the 1949 Act so as to attract the rate of duty as provided at Entry 3 Part B of Table appended to Section 3(1) of the 1949 Act.

Question No.(ii) is answered in the affirmative and it is held that if the appellant has a mining license and carrying out the mining activity being covered under the provisions of the Mines Act, 1952 and his stone crushing unit is situated in or adjacent to the mine, he will be liable to pay the rate of electricity duty as applicable to mines as envisaged in Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act. However, whether such stone crushing unit is situated in or adjacent to a mine, shall depend upon the facts of each case.

Question No.(iii) is answered that:-

(a) the Division Bench judgment in **W.A. No.140/2011 (State of Madhya Pradesh vs. M/s Stuti and others**) decided on 15.12.2016 wherein it was held that the petitioners though not the mine owners, having the crushing unit established at place not adjacent or in the premises where the mine is situated being covered by definition of 'mine' as contained in explanation (b) of Part B of Section 3(1) of 1949 Act are liable to pay electricity duty as applicable to "mines" (other than captive mines of a cement industry) does not lay down the correct law and is thus, overruled;

(b) the Division Bench in **LPA No.247/1998 (M/s Vastu vs. M.P. Electricity Board & others)** decided on 01.06.2004 correctly observed that as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine will also be covered by the said definition of 'mine' was not in issue nor decided in **M.P. No.673/1993** (**Stone Crusher Owners Association & others vs. Madhya Pradesh Electricity Board & others)** decided on 19.10.1994.

Inevitable conclusion:

(i) In Division Bench judgment of this Court in **Stone Crusher Association**'s case **(supra**) though the argument was raised on behalf of the respondent-Company that the definition of 'mine' is extended for the purposes of charging electricity duty which includes crushing, processing, etc. as activity in relation to minerals but the question as such was not decided and it was only held that the State is allowed wide choice in selection of objects and persons and such an exercise has never been said to be arbitrary or without any legislative competence and therefore, the Legislature cannot be said to have erred in defining "mine" in Explanation (b) of Part B of Section 3(1) of the Act for the purpose of imposition of electricity duty. Only the validity of Section 3(1) of the 1949 Act was upheld in **Stone Crusher Association**'s case **(supra**) which was later affirmed by the Supreme Court in **Manganese Ore India Limited vs. State of Madhya Pradesh and others, (2017) 1 SCC 81** but since the question as to whether the stone crushing unit would be covered by the definition of 'mine' in terms of explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act was not decided in **Stone Crusher Association**'s case **(supra**), therefore, the said decision does not lay down any law relating to the present controversy and it was not open to be relied upon to hold that all stone crushing unit would be chargeable to rate of duty as per Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act;

(ii) In view of the above, the decisions of this Court wherever it is held that the stone crushing units even though not occupied by the mine owners and/or not belonging to mine, situated in or adjacent to mine and even if situated outside the mining area are chargeable to rate of duty as per Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act, are not the correct enunciation of law and are, thus, overruled and such decisions where the rate of duty as per Entry 3 was held to be applicable to stone crushing units which were occupied by the mine owner and belonging to mine and situated in or adjacent to mine are upheld;

(iii) Circular dated 30.03.2010 is not the correct interpretation of Explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act.

Significant paragraphs : 2, 4, 14, 16 to 28, 36 to 44, 46 & 47

O R D E R

(Passed on this 28th day of February, 2020)

Per Ajay Kumar Mittal, Chief Justice:

These intra-court appeals have been preferred under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 against an order dated 09.01.2012 passed by a learned single Bench in W.P. No.736/2011 (*M/s Vandey Matram Gitti Nirman vs. M.P. Poorva Kshetra Vidyut Vitran Co.Ltd. And others*) whereby bunch of writ petitions, main case being W.P. No.5070/2011 (*M/s Jai Hanuman Stone Crusher vs. M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd. And others*), involving identical question: as to whether the stone crusher units, not operated by the mine owners and not located in the premises or adjacent to mine, can be charged the electricity duty under Entry 3 of Part B of Table appended to sub-section (1) of Section 3 of the Madhya Pradesh Electricity Duty Act, 1949 (hereinafter

referred to as "the 1949 Act") and whether the arrears of duty could be recovered from a retrospective date, were dismissed vide common order. The Bench observed as under:-

> "**26**. The Division Bench was thus very much alive of the issue and the expanse of applicability of the definition 'mines' contained in Explanation (b) of Section 3 of 1949 Act. It appears that the Division Bench in M/s Vastu (supra) overlooked the above facts while observing that "the point projected as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine will also be covered by the said definition of 'mine' was not in issue nor decided in M.P. No.673/1993.
>
> **27**. The issue as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine being covered by decisions in the Crusher Owners Association and others (supra) and Hindustan Copper Limited (supra) i.e., the petitioners though not the mine owners, having the crushing unit established at place not adjacent or in the premises where the mine is situated being covered by the definition of 'mine' as contained in Explanation (b) to Section 3 of 1949 Act are liable to pay electricity duty as applicable to the "mines (other than captive mines of a cement industry)".
>
> *** *** ***
>
> **32**. Thus, once the validity of the expression 'mines' as per Explanation 3(b) of 1949 Act having been upheld in the Stone Crusher Owners Association and others (supra) decided on 17.10.1994, the contention that the petitioners are charged from a retrospective date on the basis of the explanation tendered by the Secretary, Department of Energy, State of Madhya Pradesh, does not stand to reason. The petitioners' unit having been held to be covered by the definition of mine, the petitioners ought to have volunteered to pay the duty."

2. A Division Bench of this Court while hearing the matters on 12.09.2019, found conflicting observations made by two Division Bench judgments of Indore Bench of this Court rendered in **W.A. No.140/2011 (State of Madhya Pradesh vs. M/s Stuti and others**) decided on 15.12.2016 (in short "**M/s Stuti-1**") and **LPA No.247/1998 (M/s Vastu vs. M.P. Electricity Board & others)**

decided on 01.06.2004 (for brevity "**M/s Vastu-1**) and further noticed that there is lack of detailed discussion in respect of applicability of the entry relating to units that are not situated in or adjacent to a Mine. Accordingly, these *intra*-court appeals have been placed before the Full Bench in pursuance to an order dated 12.09.2019 passed by the Division Bench framing the following questions for the opinion of the Larger Bench:-

> "(i) Whether the rate of electricity duty, applicable to mines, can be applied and enforced upon stone crushing units that are not situated in and adjacent to a mine?"
>
> (ii) Whether the electricity duty applicable to mines can be imposed upon only those stone crushing units that are also indulging in mining activities?
>
> (iii) Whether the observations made by the Division Bench of this Court in the case of L.P.A. No.247/1998 **(M/s Vastu Vs. M.P. Electricity Board and others**) or the decision rendered in the case of **State of Madhya Pradesh Vs. M/s Stuti and others**, (W.A. No.140/2011) lays down the correct law?
>
> (iv) Any other issue arising out of the dispute relating to determination of the rate of electricity duty to be imposed upon the stone crushing units?"

3. As the identical questions are involved, the facts *sans* unnecessary detail are extracted from Writ Appeal No.202/2012 (*M/s Vandey Matram Gitti Nirman vs. M.P. Poorva Kshetra Vidyut Vitran Co.Ltd. And others*) for the sake of convenience.

4. Brief facts, leading to above referred questions, are that the appellant – M/s Vandey Matram Gitti Nirman engages in the business of stone crushing along with its trading, which is established on the land owned by him. The

petitioner-appellant Unit has been granted permanent registration as small scale industry by the Small Scale Department for stone crushing. The appellant has obtained due permission from the Collector, Tikamgarh vide order dated 07.09.2006 (Annexure P-1) for establishing a stone crusher and converting the big blocks of stones into *Gitty*. Upon perusal of the order dated 07.09.2006, the renewal of quarry lease for stone crusher of mining stone (*Khanij Patthar*) at Khasra No.259/1 area 4.000 Hectare situate at village Pratappura has been granted in favour of the appellant in accordance with Rule 6(3) of the M.P. Minor Mineral Rules, 1996 (hereinafter referred to as "the 1996 Rules") for a period of 10 years from the date of its sanction i.e. 06.11.2006 on the terms and conditions envisaged therein. For the purposes of smooth running of the stone crusher, the appellant has obtained high tension electricity connection for supply of electricity and was paying the electricity bill charged by the respondents as per the provisions of the 1949 Act but on 23.09.2010 (Annexure P-3) a demand notice bearing Consumer Code No.130026 was issued to the appellant for recovery of Rs.16,80,016/- towards difference of electricity duty and thereafter for non-payment of outstanding bills, another notice was issued on 24.12.2010 for discontinuance of supply connection and further demand was made for payment of Rs.17,01,016/- i.e. Rs.16,80,016/- towards arrears plus current bill amount of Rs.21,000/-. According to the appellant, the said demand notices have been issued on the basis of a circular dated 30.03.2010 (Annexure P-2) issued by the office of the Chief Engineer (Electrical Safety) and the Chief Electrical Inspector, State of Madhya Pradesh regarding levy of electricity duty in terms of the definition of "mine" provided under Section 2(1)(j)(x) and (xi) of the Mines Act, 1952 (in short "the 1952 Act") read with Explanation (b) of Part-B of

Section 3(1) of the 1949 Act. The circular mentions that in the stone crushing work where the mining material is used for crushing; processing; treating or transporting the mineral, be it in or any area outside the mines, the electricity duty shall be payable at the rate of 40 percent.

5. In W.P. No.736/2011 out of which W.A. No.202/2012 has arisen, the appellant has filed an order dated 07.09.2006 (Annexure P-1) pertaining to renewal of quarry lease for stone crusher of mining stone which has been granted in his favour in accordance with Rule 6(3) of the 1996 Rules on the terms and conditions stated therein. In other cases, nothing has been stated with regard to grant of permission or licence etc. for running of stone crushers. However, in W.P. No.9283/2011 which has given rise to filing of W.A. No.278/2012 (M/s Eastern Minerals vs. MPPKVVC Ltd. and others), the appellant has filed the documents with regard to its registration as a Small Scale Industrial Unit (Annexure P-1) and Licence to Work a Factory (under Rule 5 of M.P. Factories Rule, 1962). The order for renewal of quarry lease dated 07.09.2006 (Annexure P-1) reads as under:-

कार्यालय कलेक्टर (खनिज शाखा) जिला टीकमगढ़ म0प्र0

क्रमांक/11/खनिज/तीन–6/2006/94/ टीकमगढ़, दिनांक : 07.09.2006

<u>आदेश</u>

श्री देवेन्द्र सिंह तनय श्री लाखन सिंह निवासी प्रतापपुरा तहसील निवाड़ी जिला टीकमगढ़ (म.प्र.) के द्वारा ग्राम प्रतापपुरा तहसील निवाड़ी के अंतर्गत भूमि खसरा क्रमांक 259/1 क्षेत्रफल 4.000 हैक्टेयर क्षेत्र में खनिज पत्थर (स्टोन क्रेशर उद्योग) हेतु उत्खनि पट्टा आवेदन पत्र नवीनीकरण हेतु गौण खनिज नियमावली 1996 के प्रारूप एक नियम – 9 के अंतर्गत निर्धारित प्रपत्र पर दिनांक 03.10.2005 को निर्धारित शुल्क सहित प्रस्तुत किया गया ।

पट्टाधारी द्वारा प्रस्तुत आवेदन पत्र की जांच पट्टाधारी को स्वीकृत क्षेत्र का स्थल निरीक्षण खनिज निरीक्षक से कराया गया एवं ग्राम पंचायत से भी प्रतिवेदन प्राप्त किया गया । खनिज निरीक्षक द्वारा अपने प्रतिवेदन दिनांक 01.05.

2006 द्वारा प्रतिवेदित किया गया कि खसरा क्रमांक 259/1 रकवा 4.000 हैक्टेयर में उत्खनन हेतु क्षेत्र उपलब्ध है, ग्राम पंचायत प्रतापपुरा द्वारा भी पट्टा नवीनीकरण किये जाने की अनुशंसा की है । वनमण्डलाधिकरी टीकमगढ़ के प्रतिवेदन अनुसार आवंटित क्षेत्र ग्राम प्रतापपुरा की भूमि खसरा क्रमांक 259/1 रकवा 4.000 हैक्टेयर वनक्षेत्र के अंतर्गत नही आता है।

अतः उपराक्त आवेदन एवं जांच प्रतिवेदन में परीक्षण कर–निर्णय लिया गया कि प्रकरण नवीनीकरण का है, इसलिए म.प्र. गौण खनिज नियमावली 1996 के नियम 6(3) के अनुसार नीचे दर्शाई गई शर्तों का समावेश करते हुए पट्टाधारी श्री देवेन्द्र सिंह तनय श्री लाखन सिंह निवासी प्रतापपुरा तहसील निवाड़ी जिला टीकमगढ़ (म.प्र.) के पक्ष में ग्राम प्रतापपुरा के खसरा क्रमांक 259/1 रकवा 4.000 हैक्टेयर खनिज पत्थर स्टोन क्रेशर हेतु स्वीकृत अवधि दिनांक 06.11.2006 से उत्खनि पट्टा 10 वर्ष के लिए नवीनीकरण किया जाता है।

शर्तें

*** *** ***

सही/–
संयुक्त कलेक्टर
एवं प्रभारी अधिकारी खनिज
हेतु कलेक्टर टीकमगढ़ (म.प्र.)'

6. In the backdrop of the aforesaid fact situation of the present case, Shri Sanjay Agrawal, learned counsel for the appellant *inter alia* submitted that by the circular dated 30.03.2010, the definition of "mines" as given in the 1952 Act has been enlarged by the respondent whereby the stone crushing unit is being declared as a mining activity and therefore, the electricity duty is being charged at the rate of 40 percent by treating their stone crushing unit as mines under Entry No.3 of Part B of the Table appended to Sub-section (1) of Section 3 of the 1949 Act. In the business of stone crushing, big boulders/blocks or stones are bought from the mine owners and crushed in small pieces called as "Gitti" which is sold in the open market. The appellants do not possess any mining licence nor are they involved in the activities of extracting minerals. The stone crushing unit or the machinery of the appellant is also not situated in and adjacent to any mine and it is not used for crushing, processing, treating or

transporting the mineral. According to the learned counsel, the said proposition has not been disputed by the respondents and even the learned single Judge in its order found that it is an admitted and undisputed fact that the appellants are not holding mining lease nor are they indulged in any mining activity and further their crushing units are not situated in or adjacent to a mine and therefore, the circular dated 30.03.2010 cannot, in any manner, be said to be applicable to the appellants and accordingly, the higher rate of electricity duty should not be enforced upon the stone crusher units which are not situated in or adjacent to a mine and are not involved in mining activity.

7. Reference was also made to the Madhya Pradesh Electricity Duty (Amendment) Act, 2011, which came into existence vide Notification dated 10.08.2011. In the light of the said Notification, it is submitted that the stone crushers are different than the mines and therefore, they cannot be equated with the miners and charged the electricity duty as applicable to the mines and the miners who are engaged in the mining activity.

8. It was urged by the learned counsel that by virtue of Section 15 of the Madhya Pradesh Vidyut Shulk Adhiniyam, 2012 (M.P. Act 17 of 2012) (for short "the 2012 Act") which came into force w.e.f. 25.04.2012, the 1949 Act stands repealed. Entry 6 in Part-A of the Schedule of 2012 Act provides electricity duty of 9% of tariff per unit of electricity per month on stone crushers upto 150 HP. In 2012 Act also the extended definition of "mine" still exists in the same terms as per explanation (b) of the Schedule appended thereto as also Entry No.3 in respect of mines providing levy of electricity duty at the rate of 40 percent. The insertion of separate Entry 6 in respect of stone crusher which provides 9% electricity duty is declaratory/clarificatory and leaves no doubt as

to the meaning of definition of "mine" given in Explanation (b) of Part-B of Section 3 of the 1949 Act. It is submitted that if the stone crushers whether situated in or adjacent to a mine were covered by the extended definition of mine, separate entry would not have been provided for the same. To bolster the argument, learned counsel has referred to the Supreme Court judgment in **Commissioner of Income Tax, Bombay and others vs. Podar Cement Pvt. Ltd. and others, (1997) 5 SCC 482**. On these premises, it has been vehemently contended that the circular dated 31.10.2010 is *de hors* the 1952 Act and 1949 Act and is *void ab initio*. Lastly, it was argued that the stone crushers of the appellant not situated in or adjacent to a mine, still if they have to pay higher rate of duty it would render the words "and includes the premises or machinery in or adjacent to a mine" or "machinery in or adjacent to a mine" devoid of any meaning or application.

9. On the other hand, learned counsel appearing for the respondents-State submitted that the issue raised by the appellants in these cases is no more *res integra* and already stands answered in view of the law laid down by this Court in the decisions rendered in **M.P. No.673/1993** (**Stone Crusher Owners Association & others vs. Madhya Pradesh Electricity Board & others)**, **M/s Stuti-1**'s case (**supra**) and the decision of the Supreme Court in **(2009) 17 SCC 266 (Hindustan Copper Limited vs. State of Madhya Pradesh and others)** (hereinafter referred to as **"Hindustan Copper Limited-1**"). Learned counsel for the respondents further contended that though the 1949 Act has been repealed by the 2012 Act but as the 2012 Act came into force w.e.f. 25.04.2012 and the present dispute is in respect of the rate of duty for the period 2010 to 2012, therefore, the same is of no help to the appellants.

10. Learned counsel for the respondents-Company adopted the arguments of the State and additionally, vehemently argued in support of the impugned circular. It was contended that the circular was issued in pursuance to the directions issued in the order dated 06.07.2009 passed in **W.P. No.1640/2007 (M/s Ashish Enterprises vs. State of M.P. and others)** and coupled with the fact that such decision was required to be taken to remove the anomaly in the rate of electricity duty charged upon the stone crushers in different areas. This anomaly had crept in due to wrong interpretation of the definition of mine whereas a conjoint reading of Explanation (b) of Part-B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act makes it very clear that since the stone crushers are used for crushing or processing the minerals, therefore, even if a person is not a mine owner but is having a stone crusher, would attract the aforesaid extended definition of mine.

11. Learned counsel for the parties fairly conceded that since the year 2012 the appellants are paying duty @9%, pursuant to an interim order passed by this Court as well as in view of Entry No.6 of the Schedule appended to the 2012 Act.

12. We have heard learned counsel for the parties at length.

13. The questions No.(i) and (ii) noticed hereinabove, being interlinked are taken up together.

14. Before appreciating the contentions of the learned counsel for the parties with regard to the aforesaid two questions, it would be apt to refer to the relevant statutory provisions of the 1949 Act, 1952 Act and the 2012 Act, which read as under:-

"The Madhya Pradesh Electricity Duty Act, 1949

(M.P. Act 10 of 1949)

3. Levy of duty on sale or consumption of electrical energy. - (1) Subject to the exceptions specified in section 3-A, every distributor of electrical energy and every producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the table below on the units of electrical energy sold or supplied to a consumer or consumed by himself for his own purposes or for purposes of his township or colony, during the preceding month:-

TABLE

RATES OF DUTY

Part-A

*** *** ***

PART-B

{Subs. By M.P. 15 of 1995 [1-4-1995]}

Electrical energy sold, supplied or consumed for the purposes as shown below:-

S.No.	**Purpose**	**Rate of duty as**
1.	*** ***	***
2.	*** ***	***
3.	Mines (other than captive mines of cement industry).	40
	*** ***	***
5.	For other industries not covered under above categories, -	
	(a) Industries receiving electricity at low tension tariff:	
	(i) Upto 25 HP	3
	(ii) In excess of 25 HP upto 75 HP	4
	(iii) In excess of 75 HP upto 100 HP	3.5
	(iv) In excess of 100 HP upto 150 HP	3
	(b) Other industries	80
	*** ***	***

Explanation. - For the purposes of this section. -

(b) "mine" means a mine to which the Mines Act, 1952 (No.35 of 1952) applies and includes the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral.

"emphasis supplied"

The Mines Act, 1952

(Cent. Act 35 of 1952)

2. Definitions.-(1) In this Act, unless the context otherwise requires:

(a) to (i) *** *** ***

"(j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes:-

(i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;

(ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;

(iii) all levels and inclined planes in the course of being driven;

(iv) all opencast workings;

(v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;

(vi) all adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;

(vii) all protective works being carried out in or adjacent to a mine;

(viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;

(ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;

(x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;

(xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or operation for sale of minerals or of coke is being carried on;"

(emphasis supplied)

(jj) "minerals" means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying, or by any other operation and includes mineral oils (which in turn include natural gas and petroleum):

*** *** ***

M.P. Vidyut Shulk Adhiniyam, 2012

(M.P. Act 17 of 2012)

15. Repeal and saving. - (1) Save as otherwise provided in this Act, the Madhya Pradesh Electricity Duty Act, 1949 (No.10 of 1949) is hereby repealed.

(2) Notwithstanding such repeal -

(a) any thing done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any licence, permission or exemption granted or any direction given under the repealed Act shall, in so for as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) rules made under the repealed Act shall have effect until the rules under Section 13 are made;

(c) all directives issued before the commencement of this Act by the State Government under the repealed Act shall continue to apply until directions are issued under this Act.

SCHEDULE

[See Section 3 (1)]

PART-A

Electricity sold/supplied for the purposes as shown below

S. No	Consumer Category	Consumed Electricity	Rate of duty in (in unit) percentage of tariff per unit of electricity per month
(1)	(2)	(3)	(4)
	***	***	***
6.	Stone Crusher upto 150 HP		9 percent
	***	***	***

Provided that if electricity sold or supplied for consumption for any one purpose is used either wholly or partially, without the consent of Distribution Licensee or Franchisee, as the case may be, for consumption or any other purpose for which a higher rate of duty is chargeable the entire electricity sold or supplied shall be charged at the highest rate applicable.

*** *** ***

Explanation. - For the purposes of this Schedule-

(b) *"mine"* means a mine to which the Mines Act, 1952 (No. 35 of 1952) applies and includes the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral;"

15. Before we consider the question No.(i) posed before this Bench, it would be condign to consider the question No.(ii) first. To answer the same, it will have to be seen whether the stone crushing units fall within the meaning of word "mine" as defined under Section 2(1)(j) of the 1952 Act.

16. For the purposes of definition of "mine" as envisaged under Section 2(1)(j) of the 1952 Act, the "mine" means any excavation where any operation for the purposes of searching for or obtaining minerals has been or is being carried on and includes the items provided from sub-clause (i) to (xi) of Section 2(1)(j) of the said Act, as reproduced above. The words "in or adjacent to a mine" or "in or adjacent to and belonging to a mine" have also been used in sub-clauses (ii), (vi), (vii) and (xi) of Section 2(1)(j) of the 1952 Act. Sub-clause (viii) has

used the words “all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management”. Similarly, sub-clause (x) of Section 2(1)(j) of the Act has used the words “being premises exclusively occupied by the owner of the mine”. The intent of the Legislature being that rate of duty payable in terms of Entry 3 of Part-B of the Table appended to Section 3(1) of the 1949 Act in respect of mines (other than captive mines of cement industry) would include the mine itself, the premises or machinery situated in or adjacent to a mine wherein crushing, processing, treatment or transportation of the minerals as mined is undertaken. If the intent of the Legislature had been to include all the mining operations or mining activities involving crushing, processing, treating or transporting the mineral, it would not have put the words “premises or machinery situated in or adjacent to a mine” in the definition of “mine” envisaged under explanation (b) of Part B of Section 3(1) of the 1949 Act. Obviously, for the purposes of “mine” under explanation (b) of Part B of Section 3(1) of the 1949 Act, the intent of the Legislature was not to include the mining activities which are not in or adjacent to a mine. The definition contained in explanation (b) of Part B of Section 3(1) of the 1949 Act is, thus, clear and unambiguous.

17. The first part of the definition of “mine” as contained in explanation (b) of Part B of Section 3(1) of the 1949 Act reads that “‘mine’ means a mine to which the Mines Act, 1952 applies”. Although a perusal of the definition of “mine” as contained in Explanation (b) shows that it cannot be understood in its narrow sense but it has a wider connotation since it includes the definition of “mine” as contained in Section 2(1)(j) of the 1952 Act but the later part of the

provision contained in Explanation (b) reads that "and includes the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral". It is a trite law that the provision has to be read as a whole and not in isolation. The words "includes the premises or machinery situated in or adjacent to a mine" make the legislative intent very clear that for the purposes of 1949 Act, though the definition of "mine" as contained in Section 2(1)(j) of the 1952 Act shall apply but it shall also include the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral.

18. The mining license to carry out mining activity is issued under the Mines Act, 1952 and then only the person is allowed to carry out the mining business. Where the person has purchased the boulders from mine owners and converts the same into Gitti through the stone crusher, he cannot be said to be directly involved in the mining activity. Though the definition of "mine" as provided under explanation (b) of Part B of Section 3(1) of the 1949 Act includes the premises or machinery situated in or adjacent to a mine and used for "crushing" the mineral but it also says that the "mine" to which the 1952 Act applies whereas definition of "mine" provided under Section 2(1)(j) of the 1952 Act leads to an inference that the "mine" would mean only the excavation and where any operation for the purpose of searching for or obtaining or winning the mineral has been or is being carried out and includes all other activities provided from sub-clause (i) to (xi) of Section 2(1)(j) of the 1952 Act. Nowhere the stone crusher unit or stone crushing activity is included in the said provision to mean a "mine". If at all the stone crushing unit or its premises or machinery or such activity could be related to mining activity, still the exception is carved out from

perusal of sub-clauses (x) and (xi) of Section 2(1)(j) of the 1952 Act to mean that only those premises which are exclusively occupied by the owner of the mine or any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or operation for sale of minerals or of coke is being carried on.

19. Apart from the aforesaid, a perusal of definition of "minerals" provided under Section 2(1)(jj) of the 1952 Act shows that the mineral means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum). If a person running a stone crusher unit whether in or adjacent to mine or outside the mining area, is not obtaining the said mineral for crushing through the process defined under Section 2(1)(jj) of the 1952 Act i.e. by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation then such stone crusher unit also cannot be said to be directly involved in mining activity. In these circumstances, if a person carrying on the business of stone crushing, is purchasing the said mineral from other source and is not directly obtaining the mineral through mining, digging and quarrying etc. which is used in the stone crusher for converting into Gitti then he cannot be said to be involved in the mining activity.

20. The Supreme Court in **Manganese Ore India Limited vs. State of Madhya Pradesh and others, (2017) 1 SCC 81** considered the terms "crushing" and "processing" as used in definition of "mines" in relation to 1949 Act and 1952 Act. The Supreme Court though found that the mining would comprehend every activity by which the mineral is extracted or obtained from

earth irrespective of whether such activity is carried on at the surface or in the bowel, but, it must be an activity for winning a mineral. However, for the purposes of Item 3 "mine" to which electrical energy is sold, supplied or consumed it would include machinery or premises situated adjacent to the mine, provided the electricity is used for crushing, processing, treating or transporting the minerals. The word "mineral" used in the explanation under the Act would have reference to the mineral which is mined and is then crushed, processed, treated or transported. It was held that the words "crushing", "treating" and "transporting" are words of narrower significance and the word "processing" used between these words should not be given a very wide meaning, for the legislative intent, according to us, is narrower. Ultimately, the Supreme Court rejected the argument of the State that ferromanganese plant is being "used for crushing, processing, treating or transporting" the mineral, that is, manganese ore, therefore, the plant of the said appellant was within the meaning of "mine" and held that the appellant was neither crushing or processing or treating or transporting manganese ore but rather using the same as one of the raw materials and consuming the same while manufacturing ferromanganese alloy which is different substance physically as well as chemically. It was held that paying electricity duty at 40% cannot be applied in the ferromanganese plant as it cannot be taken to be within the meaning of "mine".

21. Now the question would arise as to what the word "adjacent" means in the context of the present controversy. The word "adjacent" is defined in Black's Law Dictionary Tenth Edition to mean "lying near or close to, but not necessarily touching". In Oxford Dictionary, the word "adjacent" is defined as "situated next to or close to something". Thus, the word "adjacent" would also

include the nearby place or the place in the same area or the neighboring area. The word "adjacent" cannot be restricted to mean "adjoining" or "abutting" alone. The Privy Council in **Mayor of the City of Wellington Vs. Mayor of the Borough of Lower Hutt** (1904 AC 773) observed that 'adjacent' is not a word to which a precise and uniform meaning is attached by ordinary usage. It was held that the word 'adjacent' is not confined to places adjoining, and it includes places close to, or near and what degree of proximity would justify the application of the word is entirely a question of circumstances.

22. For the purposes of applicability of the rate of duty to mines (other than captive mines of cement industry), the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral have been included including the mine to which 1952 Act applies. The Legislature included only those premises or machinery which are situated in or adjacent to a mine. The question with regard to Legislative intent in inserting a provision was considered by the Supreme Court in **J.K. Cotton Spinning and Weaving Mills Co. Ltd. vs. State of Uttar Pradesh and others, AIR 1961 SC 1170**. A three Judge Bench of the Supreme Court held as under:-

> "7. To remove this incongruity, says the learned Attorney- General, apply the rule of harmonious construction and hold that cl. 23 of the order has no application when an order is made on an application under cl. 6(a). On the assumption that under cl. 5(a) an employer can raise a dispute sought to be created by his own proposed order of dismissal of workmen there is clearly this disharmony as pointed out above between two provisions viz., cl. 5(a) and cl. 23; and undoubtedly we have to apply the rule of harmonious construction. In applying the rule however we have to remember that to harmonise is not to destroy. In the interpretation of statutes the court, always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case of rule making authority also.

> On the construction suggested by the learned Attorney-General it is obvious that by merely making an application under cl. (5) on the allegation that a dispute has arisen about the proposed action to dismiss workmen the employer can in every case escape the requirements of cl. 23 and if for one reason or other every employer when proposing a dismissal prefers to proceed under cl. 5(a) instead of making an application under cl. 23, cl. 23 will be a dead letter. A construction like this which defeats the intention of the rule making authority in cl. 23 must, if possible, be avoided."
>
> (emphasis supplied)

23. In **Nelson Motis vs. Union of India and another, (1992) 4 SCC 711**, while considering the constitutionality of Rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the Supreme Court held that if the words of a statute are clear and free from any vagueness and are reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences.

24. The Constitution Bench of the Supreme Court in **Nathi Devi vs. Radha Devi Gupta, (2005) 2 SCC 271** held as under:-

> "13. The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may

render the statute unconstitutional.

14. It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. (See State of U.P. and others vs. Vijay Anand Maharaj : AIR 1963 SC 946 ; Rananjaya Singh vs. Baijnath Singh and others : AIR 1954 SC 749 ; Kanai Lal Sur vs. Paramnidhi Sadhukhan : AIR 1957 SC 907; Nyadar Singh vs. Union of India and others : AIR 1988 SC 1979 ; J.K. Cotton Spinning and Weaving Mills Co. Ltd. vs. State of U.P. : AIR 1961 S.C. 1170 and Ghanshyam Das vs. Regional Assistant Commissioner, Sales Tax : AIR 1964 S.C. 766).

15. It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity."

25. Apart from the above, it is noted that after coming into force of 2012 Act w.e.f. 25.04.2012, the 1949 Act has been repealed and at Entry 6 of Part-A of the Schedule appended to Section 3(1) of the 2012 Act, the rate of electricity duty @9% has been specifically provided for stone crushers upto 150 HP whereas Entry 3 thereof remains the same as existed in Part B of Table appended to Section 3(1) of the 1949 Act i.e. Mines (other than captive mines of cement industries) and Explanation (b) appended to the said Schedule provides for the same definition of "mine" as was existing in explanation (b) of Section 3(1) of the 1949 Act. However, the 2012 Act which came into force w.e.f. 25.04.2012 and the same is not applicable with retrospective effect.

26. In view of the reading of the relevant provisions of the 2012 Act, insertion of separate Entry 6 in respect of stone crusher which provides 9% electricity duty leaves no doubt as to the correct interpretation of "mine" given in Explanation (b) of Section 3(1) of the 1949 Act and it excludes the stone crushing units which are not exclusively occupied by the owner of the mine and

not belonging to a mine and which are not situated in or adjacent to mine where the stone crushing activity is going on. Thus, the view expressed by us supra is further strengthened by promulgation of 2012 Act. The reliance can be profitably had to the judgment of the Supreme Court in **Podar Cement Pvt. Ltd.**'s case (**supra**), the relevant extract of which reads thus:-

> "44. The view expressed supra by us is strengthened/supported by a subsequent amendment to Section 27 of the Act. The said amendment was introduced to Section 27 of the Act by the Finance Act, 1987 by substituting Clauses (iii), (iiia) and (iiib) in the place of old clause (iii) w.e.f. 1.4.88.
>
> 45. In our view, the circumstances under which the amendment was brought into existence and the consequences of the amendments will have a greater bearing in deciding the issue placed before us. In other words, if after discussion we come to a conclusion that the amendment was clarificatory/declaratory in nature and, therefore, it will have retrospective effect then it will set at rest the controversy finally.
>
> 46. We have seen that the High Courts are sharply divided on this issue, one set of High Courts taking the view that the promoters/contractors after parting with possession on receipt of full consideration thereby enabling the 'purchasers' to enjoy the fruits of the property, even though no registered document as required under Section 54 of the Transfer of Property Act was executed, can be 'owners' for the purpose of Section 22 of the Act. The other set of the High Courts had taken a contrary view holding unless a registered sale document transferring the ownership as required under the Transfer of Property Act the so- called purchasers cannot become owners for the purpose of Section 22 of the Act. As a matter of fact, the judgment of the Delhi High Court in I.T.R. No. 84/77 reported in Sushil Ansal v. CIT, Delhi-III, 160 ITR 308, the appeal against which is C.A. No. 4549/95 (supra) the learned Judge has made the following observation:
>
> > "Before we conclude, we may mention that, during the course of the hearing, we suggested to the standing counsel for the Department that the Central Board should consider various practical aspects of this problem and formulate guidelines which would be equitable to the various classes of persons concerned. Perhaps, as suggested by this Court in CIT v. Hans Raj Gupta, (1981) 137 ITR 195, the time has even come for legislative

> amendment, if necessary, possibly with retrospective effect. Serious consideration at the highest administrative level was warranted in view of the recurrent nature of the problem, its magnitude and the conflict of judicial decisions. However, after taking sufficiently long adjournments, counsel informed us that no decision could be taken by the Board and requested that we should decide the reference. We have, therefore, proceeded to do so."
>
> 47. May be this is one of the reasons for the Parliament to bring in the amendment referred to above to Section 27 of the Act. At any rate the admitted position when the amendment was brought in, was that there was divergence of opinion between the High Courts on the issue at hand."

27. Similar view was expressed by a Division Bench of Punjab & Haryana High Court in **Bharat Heavy Electricals Ltd. vs. Collector of C. Ex., Chandigarh** [2012 SCC Online P&H 24518: (2013) 289 ELT 293] wherein the Division Bench observed as under:-

> "8. It is not in dispute that the contract for fabrication of power project has been awarded by the petitioner-company to M/s Amaranth Aggarwal Construction (Pvt.) Limited, Panchkula. The petitioner-company had provided steel, trusses, angles, channels and other raw material. The contractor has carried out the fabrication job on job charge basis. The fabrication was carried out by the contractor at site under the supervision of Site Manager (Erection) of the petitioner-company. The job work undertaken by the contractor does not fit in the term "manufacture" which is normally associated with movables, i.e. articles and goods and is never connected with the fabrication of the structure embedded in earth. There has, thus, not been any manufacture or production at the site except fabrication carried out by the contractor. In other words, the petitioner-company is not manufacturing any item and is not covered under Section 2(f) of 1944 Act which defines 'manufacture'. Therefore, no excise duty is leviable under Section 3 of the 1944 Act. The aforesaid interpretation has the legislative approval as the respondent had issued notification, Annexure P.7 accepting the above interpretation. It reads thus:-
>
> > "Exemption to goods fabricated at site out of duty paid on iron and steel. In exercise of the powers conferred by sub section (1) of section 5A of the Central Excise and Salt Act 1944 (1 of 1944) the Central Government, being satisfied that it is necessary in the public interest so

> to do, hereby exempts goods falling under heading 73.08 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1985) fabricated at the site of construction work for use in such construction work from the whole of duty of excise leviable thereon which is specified in the said schedule:
>
> Provided that the said goods are manufactured out of iron or steel products on which the appropriate duty of excise leviable thereon under the said schedule or the additional duty leviable thereon under section 3 of the Customs Tariff Act, 1975 (51 of 1975) as the case may be, has already been paid."
>
> (emphasis supplied)

28. In view of the careful analysis of aforesaid provisions of the 1949 Act and 1952 Act, we find that if a stone crusher unit is not exclusively occupied by the owner of the mine and is not belonging to a mine, then such stone crusher unit would not fall within the ambit and scope of explanation (b) of Part B of Section 3(1) of the 1949 Act so as to attract the rate of duty as provided at Entry 3 Part B of Table appended to Section 3 of the 1949 Act. In this view of the matter, the following conclusions are drawn in respect of question Nos.(i) and (ii):-

(i) Question No. (i) is answered in the negative by holding that rate of duty provided under Entry 3 of Part-B of the Table under Section 3(1) of the 1949 Act as applicable to mines, cannot be applied and enforced upon those stone crushing units which are only carrying on stone crushing activity whether or not situated in or adjacent to a mine. To put it differently, if a stone crushing unit is not exclusively occupied by the owner of the mine and it is not belonging to a mine, then such stone crushing unit would not fall within the ambit and scope of explanation (b) of Part B of Section 3(1) of the 1949

Act so as to attract the rate of duty as provided at Entry 3 Part B of Table under Section 3(1) of the 1949 Act;

(ii) Question No.(ii) is answered in the affirmative and it is held that if the appellant has a mining license and carrying out the mining activity being covered under the provisions of the 1952 Act and his stone crushing unit is situated in or adjacent to the mine, he will be liable to pay the rate of electricity duty as applicable to mines as envisaged in Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act. However, whether such stone crushing unit is situated in or adjacent to a mine, shall depend upon the facts of each case.

29. We now proceed to examine the effect of various judicial pronouncements to answer the question No.(iii) noted above.

30. In the cases of **Hindustan Copper Limited vs. State of M.P., AIR 2012 MP 49** (for short "**Hindustan Copper Limited-2"**) and **Stone Crusher Owners Association**'s case (**supra**), the Bench held that a crushing unit, which is situated outside the mining area and not indulging in mining activities, is yet to pay the electricity duty under the entry relating to mines. In M/s **Stuti-1**'s case (**supra**) also the Division Bench has recorded a similar finding and held that all the stone crushers would fall within the definition of "mines" irrespective of the fact that they are not indulging in any mining activity and that their crushing units are not situated in and adjacent to a mine. The judgment rendered by a Division Bench of this Court in **Hindustan Copper Limited-2**'s case (**supra**) has been overruled by the Supreme Court in the case of

Manganese Ore India's case (**supra**) but the Division Bench decision of this Court in **Stone Crusher Owners Association**'s case **(supra)** wherein the validity of Section 3(1) of the 1949 Act was upheld, has been affirmed by the Supreme Court in **Manganese Ore India**'s case (**supra**). However, the Division Bench in **M/s Vastu-1**'s case (**supra**) made an observation that the aforesaid question i.e. whether a crushing unit situated outside the mining area or not situated in or adjacent to a mine will also be covered by the said definition of mine, was not in issue nor decided in **Stone Crusher Owners Association**'s case (**supra**). In this background, the questions which have been referred to this Bench have emerged for the opinion.

31. The constitutional validity of Section 3(1) of the 1949 Act was initially challenged by the Stone Crushers in **Stone Crusher Owners Association'**s case **(supra)** wherein a Division Bench of Indore Bench of this Court while affirming the charging of the electricity duty on the stone crushers (not the mine but in the same area) at the rate applicable on mines, held that the State is allowed wide choice in selection of objects and person. Such an exercise has never been said to be arbitrary or without any legislative competence. The Legislature, therefore, cannot be said to have erred in defining "mine" under Explanation (b) of Part-B of Section 3(1) of the 1949 Act for the purposes of imposition of electricity duty. The Bench while holding so, observed as under:-

> "7. Section 3 of the Mines Act provides that the provisions of the Act, except those contained in Sections 7, 8, 9, 40, 45 and 46, shall not apply to any mine engaged in the extraction of kankar, murrum laterite, boulder, gravel, shingle, ordinary sand (excluding moulding sand, glass sand and other mineral sands), ordinary clay (excluding kaolin, china clay, white clay or fire clay), building stone, [slate], road metal, earthy fullers earth, marl chalk and lime stone. It is also submitted that excavation for digging out boulders which are

subsequently crushed by a crusher is an activity which comes under the definition of 'mine' as reproduced above and as such the rate is applicable with 75 paise.

8. The validity of the Act is challenged on the grounds indicated earlier. The main submission made is that the definition of the word 'mine' as provided in Section 3(3) under the Act cannot be extended beyond the definition which has been given in Section 2(j) of the Mines. It is also submitted that "quarrying" is not "mining".

9. The petitioners have not been able to demonstrate that the legislature could not give any extended definition to the said activity for the purpose of taxation. The State is allowed wide choice in selection of objects and persons. Such an exercise has never been said to be arbitrary or without any legislative competence. The legislature therefore cannot be said to have erred in defining "mine" under Section 3 of the Act for the purpose of imposition of electricity duty.

10. Another submission raised by the petitioner was based on the assumption that the State legislature could not enact such a law as the subject is covered by List I of VIIth Schedule, the subject being mine. The Argument is quite unacceptable in view of specific Entry 53 of List II of Schedule Seven. Entry 53 reads thus :-

> "53. Taxes on the consumption or sale of electricity - 'Consumption' – The word, not being limited in any way, authorises the imposition of a duty on the consumption of electricity by the producer himself. Such a duty cannot be regarded as a duty of excise within the meaning of Entry 84 of the List I."

The power exercised by the State in enacting the law and power of imposition of electricity duty with regard to activity which falls within the meaning of word 'mine' under the Act cannot be said to be without legislative competence. No attempt has been made to show as to why the classification made is unreasonable and has no nexus to the purpose and object of which the said provision has been made.

11. In the taxation field, the State has vide jurisdiction :-

> "Electricity (Supply) (Karnataka Amendment) Act, 1981 (33 of 1981) – S. 2 – Inserting sub-ss. (5), (6) and (7) of S. 49 of Electricity (Supply) Act, 1948 – Power tarrif increased under, uniformly for all power intensive industries including aluminium

> industry – Aluminium smelter plant set-up by appellant company claimed to be a special class of its own in which power itself being an important raw material, treating it equally with other power intensive industries for the purpose of imposition of enhanced tariff alleged to be violative of Art.14 – Held contention untenable – Broad classification of power intensive industries proper and its microscopic analysis separating the aluminium industries therefrom not warranted – Hence Art.14 not violated – Constitution of India, Art. 14 – Under classification, plea of" (See (1992) 3 SCC 580).
>
> 12. Yet another submission putforth was that the State has not charged the same rate in respect of other persons, the details of which have been given in the petition. It is alleged that State is discriminating between the same class. The averments made in this regard in para (r) of the petition have not been controverted by the State or the Electricity Board. It is a wrong exercise of power by the authorities which does not make the law invalid. The respondents shall look into the matter and correct the bills issued in respect of persons mentioned in the petition.
>
> 13. The petitioners have failed to demonstrate that the provisions of law in any way suffer from any constitutional-vice or from any statutory invalidity. The petition is dismissed. However, there shall be no order as to costs."
>
> (emphasis supplied)

The judgment passed by the Division Bench in **Stone Crusher Owners Association** (**supra**) was affirmed by the Supreme Court in **SLP (C) No.6524/1995** (**Stone Crusher Owners Association vs. M.P. Electricity Board and others**), which was dismissed vide order dated 06.03.1995.

32. It is, thereafter, that amendment to Part-B of the Table pertaining to rates of duty provided under Sub-section (1) of Section 3 of the 1949 Act has been brought into effect by M.P. Act 15 of 1995 and at Entry No.3 for the "Mines (other than captive mines of cement industry)" the rate of duty has been prescribed as 40% of the electricity tariff per unit.

33. The issue with regard to higher rate of electricity duty in terms of the extended definition of mine in explanation (b) of Part B of Section 3(1) of the 1949 Act was initially raised in **M.P. No.2821/1988 (Hindustan Copper Limited vs. The State of M.P. and others**) (for short "**Hindustan Copper Limited-3**"). The petition, however, came up for hearing after the Division Bench decision in **Stone Crusher Owners Association**'s case (**supra**). In the facts of that case, the petitioner therein was a Government Company engaged in extraction of copper ore by open cast mining process and that after drilling and blasting the ore in the open pit mine, the ore in the form of boulders was transported to the primary crusher which was situated away from mine where it was crushed into pebbles/pieces. Thereafter, such crushed ore was carried on a conveyor to a secondary crusher for further crushing into smaller pebbles and then it was transported to concentrator plant, all crushing units were situated away from mine. Challenge was made on the ground that levy of higher rate of electricity duty treating it to be mine resulted in dissimilar treatment to similar (processing) activity by prescribing different rates for different factories and the definition has the effect of categorising the factories registered under the Factory Act, and carrying on the same activity of processing, treating and transporting the minerals, into two categories, namely, one those which are adjacent to mine and others which are not adjacent. The Division Bench dismissed the petition (Hindustan Copper Limited-3**)** vide order dated 09.02.2005 and held as under:-

> "18. The petitioner relies on the dictionary meaning of the word 'adjacent' which is 'lying near or close', 'adjoining', 'bordering' to contend that unless the premises/plant and machinery is situated immediately abutting or adjoining the mine so as to be an integral part of mine, electricity used therein cannot be subjected to duty at a rate prescribed for 'mines' but should be subjected to the

rate of duty prescribed for other industries. Petitioner contends that as its processing plant/machinery are all at a distance of about 2.5 km to 6 km, they cannot be said to be 'adjacent' to the mine.

19. The word 'adjacent' has a wider scope than the words 'abutting' or 'touching' or 'adjoining' or 'contiguous', which normally contemplates some 'contact' at some point or line. But the term 'adjacent', not only refers to something which is next or contiguous, but also to something nearby or neighbouring or something in the same area.

19.1 The term 'adjacent' came up for consideration before the Privy Council in **Mayor of the City of Wellington Vs. Mayor of the Borough of Lower Hutt** (1904 AC 773). The Privy Council observed that 'adjacent' is not a word to which a precise and uniform meaning is attached by ordinary usage. The privy council held that the **word 'adjacent' is not confined to places adjoining, and it includes places close to, or near and what degree of proximity would justify the application of the word is entirely a question of circumstances**. In that case, the Privy Council considered the meaning of the word 'adjacent borough' used in Section 219 of the Municipal Corporation Act, 1900 which provided 'in any case where the council of any borough desires to construct ….. a bridge ….. in any position that will, in its opinion, be of advantage and benefit to the whole or any considerable portion of the inhabitants of an adjacent borough or country or any other district, and where it is, in the opinion of such council, reasonable that the local authority of such adjacent district should contribute to the cost, the council may in proper manner apply to the Governor, who may by warrant authorize the work to be done ….' In that case the Borough of Lower Hutt proposed to construct a bridge over the Hutt river, at a point within its own boundaries, and give notice to the City of Wellington of its intention to apply to the Governor for power to construct the bridge, and to recover 20% of the cost from the City of Wellington. That was opposed by the City of Wellington on the ground that it was not an adjacent borough. The map showed that the city of Wellington did not immediately adjoin the Borough of Lower Hutt and the distance was six miles between their boundaries and that three other local boundaries intervened. The Court of Appeal held that Wellington City was adjacent to Lower Hutt Borough within the meaning of the section. The appeal against the said decision was dismissed by the Privy Council. The Privy Council explaining the meaning of the 'adjacent' as aforesaid, affirmed the view of the Court of Appeal."

19.2 In Hukma Vs. State of Rajasthan (AIR 1965 SC 479), the Supreme Court had occasion to interpret the term 'area adjoining land customers

frontier'. It held that the said words do not mean only a few miles touching the frontier, but may include the entire district adjoining the frontier. It observed:

> 'It is true that the village next to the frontier adjoins the frontier. It is equally correct, however, to describe the entire district nearest the frontier as adjoining the frontier.'

20. The word 'adjacent' therefore, has to be understood with reference to the context and circumstances in which it is used. The word is used in defining 'mine' as including 'the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral'. The following is evident from the definition:

(i) If the plant/machinery is situated in the neighbouring area, but is not used for crushing, processing, treating or transporting the mineral, then it would not fall under the definition of 'mine'.

(ii) If the plant/machinery is not in the vicinity, but is situated in a distance area, wholly unconnected, it would not fall under the definition of 'mine', even if it is used for crushing, processing, treating the mineral extracted from the mine in question.

(iii) But if the plant/machinery is used for crushing, processing, treating or transporting the mineral, which is extracted from the neighbouring mine, and is situated near the mine, though not touching or abutting the mine, then it will fall within the definition of 'mine'.

21. We may at this juncture take notice of the fact that the definition of 'Mine' in explanation (b) to Section 3 of the Act is not a special extended definition created only for the purpose of the Act. In fact, it virtually borrows the definition of "Mine" from the Mines Act, 1952. Section 2(j) of Mines Act defines "Mine" as meaning "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes:

(i) to (x) …….

(xi) any premises in or adjacent to an belonging to a mine on which any process ancillary to the getting, dressing or preparing for sale of minerals or of coke is being carried on."

There is therefore, nothing strange in any premises (or plant/machinery) in or adjacent to a mine on which any processing of the ore is carried on, being considered as a part of a mine.

22. If the processing machinery is situated in the vicinity of the mine, that is, in the area neighbouring to the mine particularly if it is in the same leased

area where the mine is situated, it will fall within the definition of 'mine'. Where the mining lease is of thousands of hectares, and where the mine pit is itself of a diameter/width of one or two km, distances of 2.5 km to 6 km will be considered as 'adjacent' when judged from the size of the mine and the total area leased for mining. So long as the Processing Plant is within the same mining area leased to a mine operator, it will be considered adjacent to the mine, even if it is at a distance of 2.5 km. from the mine pit.

23. In this case, it is not in dispute that the petitioner has taken a mining lease of a large tract of land from the State Government. Malanjkhand Copper Mining & Ore concentration complex comprising the open pit mine, and the process plant (that is Primary Crusher, Secondary Crusher, Ball Mill, Concentrator Plant, Tailing Pumps as also Intake Well and Water Treatment) are situated within a single contiguous area leased to the petitioner. This is evident from the plan Annexure R-II produced by the State Government. All are situated within a distance varying from about 2.5 km. to 6 km. (except the intake well which is litter farter away). The activity of processing is closely connected to mining. The extended definition of 'mine' is obviously to avoid persons carrying on mining activity, bifurcating such activity and terming the processing part as a separate activity by obtaining a factory licence and thereby avoid payment of higher rate of duty. Further, as noticed above, the definition of 'Mine' in the Mines act itself includes the premises adjacent to the mine in which the process ancillary to getting, dressing or preparing for sale of minerals takes place. The definition of "Mine" contained in explanation (b) is not therefore something that is added to bring a greater burden under the Electricity Duty Act.

24. The definition of the term 'mine' include not only any premises/machinery in the mine, but also any premises/machinery adjacent to the mine, that is in the neighbouring area. The use of the word 'adjacent' in the context clearly shows the legislative intent is to include the plant and premises situated in the mining area leased/owned by the Mine Operators if such plant/premises is used for processing (crushing, processing, treating or transporting) of the ore extracted from the mine. This is obviously to scuttle any attempt by the mine operators to carve out and exclude the processing from 'Mining' by registering them as a separate 'factory'. Having regard to the extended definition of the word 'mine', there can be no doubt that the petitioner's processing plant consisting of Primary Crusher, Secondary Crusher, Ball Mill, Concentrator Plant, Tailing Pumps, as also Intake Well and Water Treatment Plant will be 'mine' as defined in the Table under Section 3 of the Act."

34. The said order was assailed before the Supreme Court in **Civil Appeal No.6725/2008**. The Supreme Court vide judgment rendered in **Hindustan Copper Limited-1**'s case **(supra)**, set aside the order of the Division Bench and remanded the matter to decide the question formulated by it, which reads as under:-

> "Whether copper concentrate is a mineral and whether Explanation to Part B of the Act applies even though manufacturing process is involved to bring it into existence?

35. After remand, the petition was again dismissed by Division Bench of this Court vide order dated 1.12.2011 in **Hindustan Copper Limited-2**'s case (**supra)**. The Bench held as under:-

> "11. The expression 'mine' used in explanation (b) to Part B of Section 3 creates a legal fiction. In interpreting the provision creating a legal fiction, the Court is required to ascertain for what purpose the fiction is created. [See: State of Bombay v. Pandurang Vinayak and Others, AIR 1953 SC 244] In explanation (b) while defining 'mine' the expression 'means and includes' has been used which has to be considered as exhaustive. In other words, the definition will embrace only what is comprised within the ordinary meaning of 'mine' part, together with what is mentioned in the inclusive part of the definition. The expression 'mineral' which is used in explanation (b) to Part B of Section 3 has not been defined in the Act and, therefore, as per well settled rules of statutory interpretation referred to supra it has to be read with regard to subject and object of the Act. The object of the Act is to raise revenue by prescribing rate of duty. As stated above, the highest rate of duty is prescribed for mining industries as it is exploiting the natural wealth which is non-renewable therefore, it must pay higher rate of duty which can be utilized for meeting the essential expenditures by the State Government. Taking into account the fact that the expression 'mine' creates a legal fiction and if the word 'mineral' is read subject to the context and object of the Act, it is graphically clear that wide meaning has to be given expression 'mineral'. If the copper ore is converted to copper concentrate by processing, it only enriches content of copper in the copper concentrate and it does not cease to be 'mineral', merely on its'

conversion from copper ore to copper concentrate.

12. In view of the preceding analysis, in our considered opinion, copper concentrate is a mineral as defined in explanation (b) to Part B of Section 3 of the Act and, therefore, the explanation (b) to Part B of Section 3 of the Act applies to it.

13. Besides "copper concentrate" is the end product. What is 'crushed, processed, treated or transported' is not 'copper concentrate' but the ore. The electricity in question is being consumed for such "crushing, processing, treating or transportation".

14. Another line of argument advanced was alleged discrimination between industries located in close proximity of the mine and other industries carrying on the same activity namely 'crushing, processing, treating or transportation', which are not located in such close proximity of the mine. The word 'adjacent' does not mean 'adjoining' or 'abutting', but has a wider connotation, and would include close proximity such being in the same locality. This proposition is not disputed, and therefore it is not necessary to refer to the case law cited for the meaning of the word "adjacent". In reply the learned Additional Advocate General submits that this differentiation is justified because the increased overheads such as transportation costs have been considered for not subjecting the far away industries to higher tax. Considering the case law cited above permitting wide discretion to the State in respect of taxation, we are inclined to agree with the submission of the learned Additional Advocate General.

15. In the result the writ petition fails and is hereby dismissed."

36. The Supreme Court in **Manganese Ore's case (supra)** has set aside the Division Bench judgment of this Court in **Hindustan Copper Limited-2**'s case **(supra)** and held that the Copper concentrate is a different and distinct product and not the same mineral extracted and therefore, electricity duty at the rate prescribed for the 'mine' would not apply. The Court held as under:-

"29. Thus, the Ferro Manganese Plant, being a unit involved in manufacturing of ferromanganese alloy as opposed to a unit involved in crushing, treating, processing, etc. of manganese ore, cannot be treated within the extended definition of 'mine' within the Explanation (b) of Part B of Table of Rates of Duty to Section 3(1) of the Act.

30. The Executive Engineer and Chief Electrical Inspector, Government of Madhya Pradesh, vide its letter dated 06.02.2005 to the Superintendent Engineer and Deputy Electrical Inspector, Government of Madhya Pradesh, had confirmed as under:-

> "On spot inspection it is confirmed that, Ferro Manganese Plant does not come in the Mining Area and Electricity Duty @ 8% being charged at present by the M.P. State Electricity Board is proper."

31. The Ferromanganese Alloy so manufactured by the appellant using the mineral Manganese at its Ferromanganese plant is an entirely different product from its mineral raw material both physically and even chemically. Moreover, unlike Manganese ore a ferromanganese alloy can never be found in the natural state and it has to be manufactured from the manganese ore and other minerals only. The same logic applies to copper concentrate as a different and distinct product comes into existence.

32. Thus analyzed, we find that in both the cases, the different products in commercial parlance have emerged. Hence, we are inclined to think that the principle of noscitur a sociis has to be applied. As a logical corollary, tariff has to be levied as meant for manufacturing unit. Therefore, the analysis made by the High Court is not correct and, accordingly, the judgments rendered by it deserve to be set aside and we so direct. However, during this period if any amount has been paid by the appellants to the revenue, the same shall be adjusted towards future demands."

37. In writ petition bearing **W.P. No.166/1996 (M/s Vastu vs. M.P.E.B.)** (for short "**M/s Vastu-2**") preferred before Indore Bench of this Court, a question was raised: as to whether the crushing activity carried on by the petitioner therein out-side the mining area would be leviable to duty at the higher rate as provided by Section (3) of the 1949 Act (as amended by the Amendment Act of 1989). The extended definition to the term "mine" was applied to mean a mine to which the 1952 Act applies and includes the premises of machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral. The learned single Judge dismissed the said writ petition vide order dated 11.02.1998 thereby holding that the case was covered

by the Division Bench judgment in **Stone Crusher Owners Association**'s case (**supra**) which was confirmed by the Supreme Court. While considering the legality and validity of the order of the learned single Judge, which was assailed in **M/s Vastu-1**'s case **(supra**), the Division Bench vide order dated 17.12.2002 observed that while no return was filed on behalf of the respondent-State, the respondent No.1 M.P. Electricity Board in its reply clearly admitted the averment made by the petitioner therein that the unit in question was situated outside the mining area and that the petitioner was not carrying on any mining activity, yet the writ petition was disposed of by holding that the case of the petitioner therein was covered by the judgment in **Stone Crusher Owners Association**'s case (**supra**). The Division Bench further observed that the point projected in the present petition as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine will also be covered by the said definition of 'mine', was not in issue nor decided in **Stone Crusher Owners Association**'s case (**supra**). The relevant extract of the decision in **M/s Vastu-1**'s case (**supra**) reads as under:-

> "3. We have perused the judgment dated 19.10.94 passed in M.P.No.673/93. In the said M.P. No.673/93, the challenge was to the vires to the said definition of 'mine' given in Sec.3(b) of the M.P. Electricity Duty Act, 1949 as also the amendment made in the Schedule, imposing higher tariff. The Division Bench held that the provisions under challenge do not suffer from any constitutional-vice or from any statutory invalidity. With this finding the said petition was dismissed. The point projected in the present petition as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine will also be covered by the said definition of 'mine', was not in issue nor decided in M.P.673/93. In our considered opinion, the learned Single Judge ought to have considered the aforesaid issue involved in the petition. We, therefore, deem it proper to remit the case back to the learned Single Judge for deciding the petition afresh. It will also be appropriate to have the reply of the State filed in the case. After all it is the

> State which is the real contesting party inasmuch as the duty is to be paid to the State although through the agency of the M.P. Electricity Board. It is really surprising to note that the State having taken adjournments several times failed to file their reply. Shri Desai, learned Dy. Adv. General submits that the reply shall be filed by the State no sooner the case is listed before the Single Bench."

38. After remand of the matter from LPA in **Vastu-1** (**supra**), the learned single Bench vide order dated 13.08.2003 decided the **Writ Petition No.166/1996 (M/s Vastu vs. M.P. Electricity Board and others)** (for short "**M/s Vastu-3**"). The Bench considered the return filed by the State, wherein it was stated on behalf of the State that the area in which the crushing machine of the petitioner firm was installed, was adjacent to the mine as the survey number of mining area is 1429/1/3 in Khajarana, Indore and in the same survey number the stone crusher of the petitioner Firm was situated. In rejoinder, the petitioner therein denied that its plant was installed in any part of the mining area nor was it adjacent to it but it was situated wholly outside the said area in another of the said survey number 1429/1/3. The Bench came to the conclusion that if the area of survey No.1429/1/3 on which petitioner's crusher was situated, was in the mining area or adjacent to it, the duty would be charged for the mine otherwise the duty would be charged in accordance to item No.(5) of Part-B of the Table appended to Section 3 of the Act but in the absence of any revenue record or any other document produced from either side showing that the area on which the crusher of the petitioner was installed was either in the mine or adjacent to it, the Bench passed the following order:-

> "16. On the basis of the above, it is not possible for this Court to examine and to come with a definite conclusion that whether the disputed area on which the petitioner has installed the crusher is situated in mine or adjacent to it and hence, it would therefore, be just and proper to dispose of this petition by providing as under:-

> "The petitioner may approach Principal Secretary, Energy Department with his representation indicating therein whether the area in which the crusher is installed is in the mining area or adjacent to it or beyond it. The petitioner would be free to submit relevant documents in this regard. The Principal Secretary may call the report after getting that area inspected by an Officer not below the rank of Deputy Collector furnish the relevant revenue record so as to indicate the exact location of the crusher and if it is found that the crusher is installed wholly outside the mining area and is not adjacent to it, the necessary orders be passed in that regard in respect to the rates of the duty chargeable in terms of item (5) of table-B to Section 3 of the Act."

39. The point with regard to charging of electricity duty @40% on stone crusher unit, as applicable to mines, also received consideration in **W.P. No.3153/2004 (Shri Krishan Mehrotra vs. Madhya Pradesh State Electricity Board and others**) decided by a learned single Bench of this Court on 29.08.2008. In the facts of that case, the petitioner - an owner of a stone crusher carrying business of stone crushing such as purchasing the boulders from the mine owners and then crushing the boulders and converting them to "Gitti" – claimed that there was no mining lease sanctioned in his favour and that he had obtained a new electricity connection from the respondent with a contract demand of 60 HP to run the stone crusher which was installed in his premises. A grievance was raised that he had to make payment of electricity dues @4% of the electric tariff but since September, 1998 he was being charged electricity duty @40% of the electricity tariff on the ground that being a stone crusher, the petitioner is covered by the definition of 'mine' as provided under the 1949 Act. The grievance of the petitioner was resisted by the respondents inter alia stating that merely because the mine is at a distance of 10 kilometer, does not make any difference. The Bench took into consideration the earlier

Division Bench decision of this Court in M.P. No.2821/1988 passed on 9.2.2005 (**Hindustan Copper Limited-3)** wherein while dealing with the question: as to whether use of the words "adjacent to a mine" would mean only the premises or machinery abutting to or adjacent the mine, and not premises or the plant, machinery situated at a distance of about 2.5 to 6 km, it was opined that the definition of the word "mine' not only includes premises/machinery in the mine but shall also include any premises/machinery adjacent to the mine, that is in the neighbouring area. The Division Bench also held that this is obviously to scuttle any attempt by the mine operators to carve out and exclude the processing from 'mining' by registering them as a separate factory and therefore, in view of the extended definition of the word 'mine' there can be no doubt that the petitioner's processing plant consisting of primary crusher, tailing pumps as also intake well and water treatment plant will be 'mine' as defined in the table under Section 3 of the Act. After observing so, the learned single Bench in **Shri Krishan Mehrotra (supra)** concluded as under:-

> "9. In view of the aforesaid, it is clear that the Division Bench in fact was considering the word 'adjacent' with reference to certain activities by the mine owners. The activities consisting of Primary Crusher, Tailing Pumps, as also Intake Well and Water Treatment Plant were taken note of by the Division Bench which were owned and carried out by the mine owners itself.
>
> 10. The facts of the present case are entirely different. It is not the case of the respondents that the present petitioner is the holder of mining lease and is having a processing plant. The case of the petitioner in fact is that he is carrying out the activities of stone crusher by crushing the boulders into 'gitti'. It is nobody's case that the aforesaid gitti is being utilized and used in any of the processing of the ultimate object for which the mine or factory is situated. Respondents have also not made out any case that the conversion of boulders into small gitti have in any way a nexus with the activities run by the mine owners in whose favour mining lease has been granted. The present petitioner purchases boulders from the mine owners for converting it into gitti and gitti is

being sold in the open market. The crushing plant is situated nearly about 10 km. away from the leased area granted.

11. It is the case of the petitioner that he purchases ballast from the traders and mine lessees. There is no mining lease sanctioned in favour of the petitioner. All the aforesaid facts have not been denied by the respondents while filing the return.

12. In view of the aforesaid facts and circumstances, I am of the view that the judgment passed by the Division Bench as aforesaid will have no application in the present case for the reasons stated hereinabove. In view of the aforesaid, I am of the view that respondents have not legally treated the stone crusher of the petitioner to be a 'mine' for the purposes of Section 3 of the Table of the Electricity Duty Act, 1949 and the electricity duty which is levieable from the petitioner is @ 4% as per part B of the Table, Item No.5(a) (ii) which relates to the industries receiving electricity at law tension tariff in excess of 25 HP upto 75 HP."

The single Bench decided the question by holding that the stone crushers not having mining lease and about 10 kms away from the lease area would not fall within the explanation "mine" under Section 3 of the 1949 Act.

40. The question with regard to the electricity tariff payable by a stone crusher, not situated within the mining land, had come up for consideration in **W.P. No.846/2005 (M/s Stuti Partnership, Indore vs. M.P.E.B.**) (for short "**M/s Stuti-2**"). The learned single Bench of Indore Bench of this Court allowed the writ petition by order dated 24.06.2009 and observed that the Division Bench judgment in **M/s Vastu-1 (supra**) decided on 17.12.2002 was of the view that since the challenge in M.P. No.673/1993 had been raised to the vires of the definition of mine given under Explanation (b) of Part-B of Section 3 of the 1949 Act and said challenge had been rejected by the Division Bench, therefore, the definition of mine was not even a matter of any interpretation in **Stone Crusher Owners Association**'s case **(supra)** and therefore, the observation

made by Division Bench in **Stone Crusher Owners Association**'s case **(supra)** could not be applied to the controversy as to whether the stone crusher in question was situated outside or adjacent to the mine and would also be covered under the definition of mine. The Court, therefore, directed the State for adjudication of quantum of electricity duty with a rider that it would not reopen the controversy as to whether the stone crusher of the said respondent is to be treated within the mining area or not, since specific declaration had been given by the writ court on the basis of the report of the Collector that the stone crusher is to be treated outside the mining land. Against the order of the learned single Judge dated 24.06.2009, the State preferred writ appeal forming the subject matter of the case in **M/s Stuti-1**'s case **(supra)**. On 15.12.2016, the Division Bench of Indore Bench of this Court passed the following order:-

> "**21.** In the Stone Crusher Owners Association and others (supra) the Division Bench dwelt with the challenge to the validity of the definition 'mines' as it stood vide Explanation (b) of Section 3 of the 1949 Act. The petition was at the instance of Stone Crusher owners who installed Stone crushing units at Jawahar Tekri, Indore alleging that their activity is industrial inasmuch as it consists of converting stones into stone chips, popularly known as 'gitti'. In the said case State of Madhy Pradesh had awarded a lease of Stone Mine situated at Jawahar Tekri to co-operative society known as Shramik Kamgar Karigaron Ki Sahkari Sanstha (Maryadit) Village Sinhasa, Jawahar Tekri, Indore. Stones extracted by the Society at Jawahar Tekri in form of boulders was sold to member of the Stone Crusher Owners Association who crushed it with power gererator (or diesel as the case may be) by electricity and convert it into 'gitti' and sell or supply to consumers. The challenge to validity of the definition 'mines' vide Explanation 2 (b) of 1949 Act, was challenged on the following grounds; viz.,
>
> i. Being beyond legislative competence.
> ii. Discriminatory being violation of Article 14 of the Constitution of India – That the explanation (Sec. 3 Explanation (b) makes an irrational and arbitrary discrimination between premises and machinary used for crushing processing treating or transporting

any mineral which is situated in or adjacent to a mine and the premises or machinery which is not so situated or adjacent to mine.

iii. That the boulders crushed loose their character and become raw material for the purposes of industrial activity of crushing and, therefore, the inclusive definition of 'mine' inapplicable.

22. The Division Bench upheld the validity on the ground that it is within the power of the State Legislature to have an 'extended definition of mine' for the purpose of charging electricity duty which includes crushing process etc. As activity in relation to minerals and in that view of that matter the charges applicable would be at the rate of 75 paise per unit and not at any lower rate as claimed by the petitioner." While dealing with the allegation of discrimination that those Stone Crushers are not located in the premises or Machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral, the Division Bench in the Stone Crusher Owners Association (supra) held : "12. Yet another submission put-forth was that the State has not charged the same rate in respect of other person the details of which have been given in the petition. It is alleged that the State is discriminating between the same class. The averments made in this regard in para (1) of the petition have not been controverted by the State or the Electricity Board. It is a wrong exercise of power by the authorities which does not make the law invalid. The respondents shall look into the matter and correct the bills issued in respect of persons mentioned in the petition.

23. The issue as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine being covered by decisions in the Crusher owners Association and others (supra) and Hindustan Copper Limited (supra), i.e., the petitioners though not the mine owners, having the crushing unit established at place not adjacent or in the premises where the mine is situated being covered by the definition of 'mine' as contained in Explanation (b) to Section 3 of 1949 Act are liable to pay electricity duty as applicable to the "mines (other than captive mines of a cement industry)".

24. Thus once the validity of the expression 'mines' as per Explanation 3 (b) of 1949 Act having been upheld in the Stone Crusher Owners Association and others (supra) decided on 17.10.1994, the contention that the respondent charged from a retrospective date on the basis of the explanation tendered by the Secretary, Department of Energy, State of Madhy Pradesh, does not stand to reason. The respondent unit having been held to be covered by the definition of mine, the respondent ought to have volunteered to pay the duty.

25. For the above mentioned reasons, the impugned order dated 24.6.2009 passed in W.P.No.846/2005, is liable to be set aside. Accordingly, it is set aside. Writ appeal filed by the appellant – State is allowed, but without orders as to costs."

41. In **M/s Ashish Enterprises**'s case **(supra)**, a single Bench of Indore Bench of this Court took note of the judgments of this Court in **M/s Stuti-2**'s case (**supra**) and Division Bench decisions in **M/s Vastu-1**'s case **(supra**) as well as Division Bench judgment in **Stone Crusher Owners Association**'s case **(supra**) and observed as under:-

"It may be specifically noticed that the petitioner-firm has specifically maintained that the stone crusher run by it is situated in industrial area, Neemuch, and is not situated in any manner, in the mining land. Consequently, it is apparent that the electricity duty payable by the petitioner-firm is to be determined, treating the said stone crusher being situated in the land other than the mining land, and as such, the observations of the Division Bench in M.P. No.673/1993 are not even applicable. However, it is not even the matter of any dispute between the parties that the rates of electricity duty have varied from time to time, even for ordinary industries, situated outside the mining area. Therefore, it would be appropriate to relegate the matter to the Principal Secretary, Energy Department only for a limited purpose for adjudication of the quantum of electricity duty chargeable from the petitioner-firm. However, it would not be open for the said Authority to enter into the controversy, as to whether the stone crusher of the petitioner-firm is to be treated within the mining land or not, since the said stone crusher is concededly situated in industrial area, Neemuch i.e. outside the mining land.

As a result of the aforesaid discussion, the present writ petition is allowed to the extent that the orders dated December 21, 2006, passed by the Electricity Consumer Grievances Redressal Forum, Indore and the communication dated January 24, 2007, issued by the Executive Engineer, respondent no.3 are hereby set aside. As discussed above, the Principal Secretary, Energy Department shall adjudicate the quantum of electricity duty payable by the petitioner-firm.

In this regard, the requisite order of determination of quantum of electricity duty shall be passed by the Principal Secretary, Energy Department,

> within a period of six months from the date a certified copy of this order is received. It would be open to the petitioner-firm to file written submissions, indicating the quantum of electricity, which it is liable to pay. If on such determination, it is found that any amount in excess has been paid by the petitioner-firm, then the same shall be refunded/adjusted by the authorities, in accordance with law."

42. In **Shri Ram Sharma Stone Crushers vs. State of M.P. and others, 2016 (1) MPLJ 159** (SB), the term 'mine' as mentioned in 1949 Act which was amended w.e.f. 15th May, 1995 and further defined in the 1952 Act was considered with reference to the stone crushing unit of the petitioner therein engaged in the business of crushing of black stones who was charged electricity duty at the enhanced rate of 40% per month w.e.f. June, 2010 than the earlier prescribed rate of 8%. The learned single Bench found that though there was a dispute as to whether the machinery was situated adjacent to mine but the fact remained that the mine and machinery of the petitioner therein were situated in the same village i.e. Mou, Gwalior. Under the circumstances, considering the judgments in **Shri Krishan Mehrotra**'s case (**supra**) and **Hindustan Copper Limited-2**'s case (**supra**), the learned single Judge came to hold as under:-

> "12. The definition of mine shows that it is applicable to mines and it further includes the premises and machinery situated in or adjacent to a mine and used for crushing, processing, treating and transporting etc. Suffice it to say that once the mine and machinery in the question are situated in the same locality, it falls within the ambit of 'mine' under the Adhiniyam of 1949. Section 2(1)(j) of Mines Act also makes it clear that any premises in or adjacent to and belonging to mine will fall within the ambit of 'mine'. This is trite law that expression 'mine' used in explanation (b) to Part B of Section 3 creates a legal fiction. While interpreting the legal fiction, the court is required to ascertain for what purpose the fiction is created [See: *State of Bombay Vs. Pandurang Vinayak and Others, AIR 1953 SC 244*). In explanation (b) while defining 'mine' the expression ' means and includes' has been used which has to be considered as exhaustive. In other words, the definition will embrace only

> what is comprised within the ordinary meaning of 'mine' part together with what is mentioned in the inclusive part of the definition. Thus, in my view, the definition of "mine" is wide enough to include the petitioner firm."

43. The Division Bench of this Court in **Stone Crusher Owners Association**'s case **(supra)** did not decide the issue that even if a person is not engaged in mining activities and his stone crusher is not situated in or adjacent to a mine even then he would be covered by the extended definition of "mine" given in Explanation (b) of Part-B of Section 3 of the 1949 Act, therefore, the said decision is not applicable in the present case. In **M/s Vastu-1**'s case (**supra**), the Division Bench specifically observed that the issue: as to whether a crushing unit situated outside the mining area, or to be more precise not situated in or adjacent to a mine, will also be covered by the said definition of mine, was not in issue nor decided in **Stone Crusher Owners Association**'s case (**supra**). The judgment in **Hindustan Copper Limited-2**'s case **(supra)** was set aside by the Supreme Court in **Manganese Ore**'s case **(supra)** wherein the Court has held that the word "mineral" used in the aforesaid explanation under the Act would have reference to the mineral which is mined and is then crushed, processed, treated or transported and therefore, if there is no extraction of mineral, then there is no question of crushing, processing, treating or transporting the mineral. Once it was found by the learned single Judge that the appellants are neither the mine owners nor having their crushing units established at place adjacent or in the premises where the mine is situated, could not have held that the case of the appellant was covered by the decisions in **Stone Crusher Owners Association** (**supra**) and **Hindustan Copper Limited-2**'s case (**supra**) firstly because the said issue was not dealt with by the Division Bench in **Stone Crusher Owners Association**'s case (**supra**) and secondly, the

decision in **Hindustan Copper Limited-2**'s case (**supra**) was set aside by the Supreme Court in **Manganese Ore**'s case (**supra**).

44. From the above discussion and in view of the answer to question Nos.(i) and (ii) above, it is concluded that:-

(i) the Division Bench judgment in **M/s Stuti-1**'s case **(supra**) wherein it was held that the petitioners though not the mine owners, having the crushing unit established at place not adjacent or in the premises where the mine is situated being covered by definition of 'mine' as contained in explanation (b) of Part B of Section 3(1) of 1949 Act are liable to pay electricity duty as applicable to "mines" (other than captive mines of a cement industry) does not lay down the correct law and is thus, overruled;

(ii) the Division Bench in **Vastu-1**'s case **(supra**) correctly observed that as to whether a crushing unit situated outside the mining area or to be more precise not situated in or adjacent to a mine will also be covered by the said definition of 'mine' was not in issue nor decided in **Stone Crusher Association**'s case **(supra**);

(iii) in Division Bench judgment of this Court in **Stone Crusher Association**'s case **(supra**) though the argument was raised on behalf of the respondent-Company that the definition of 'mine' is extended for the purposes of charging electricity duty which includes crushing, processing, etc. as activity in relation to minerals but the question as such was not decided and it was only held that the State is allowed wide choice in selection of objects and persons

and such an exercise has never been said to be arbitrary or without any legislative competence and therefore, the legislature cannot be said to have erred in defining "mine" in Explanation (b) of Part B of Section 3(1) of the Act for the purpose of imposition of electricity duty. Only the validity of Section 3(1) of the 1949 Act was upheld in **Stone Crusher Association**'s case **(supra**) which was later affirmed by the Supreme Court in **Manganese Ore**'s case **(supra**) but since the question as to whether the stone crushing unit would be covered by the definition of 'mine' in terms of explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act was not decided in **Stone Crusher Association**'s case **(supra**), therefore, the said decision does not lay down any law relating to the present controversy and it was not open to be relied upon to hold that all stone crushing unit would be chargeable to rate of duty as per Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act;

(iv) In view of the above, the decisions of this Court wherever it is held that the stone crushing units even though not occupied by the mine owners and/or not belonging to mine, situated in or adjacent to mine and even if situated outside the mining area are chargeable to rate of duty as per Entry 3 of Part B of Table appended to Section 3(1) of the 1949 Act, are not the correct enunciation of law and are, thus, overruled and such decisions where the rate of duty as per Entry 3 was held to be applicable to stone crushing units which were occupied by the mine owner and belonging to mine and

situated in or adjacent to mine are upheld;

45. Having answered the question Nos.(i) to (iii) posed in the beginning, it would be essential to refer to the clarificatory circular dated 30.03.2010 issued by the Chief Engineer (Electrical Safety) and Chief Electrical Inspector, State of M.P. as the controversy involved herein emanates from the said circular. The said circular bears reference of a Single Bench decision of Indore Bench of this Court rendered in **M/s Ashish Enterprises (supra)** decided on 06.07.2009. The circular dated 30.03.2010 reads as under:-

''कार्यालय मुख्य अभियन्ता (विद्युत सुरक्षा) एवम् मुख्य विद्युत निरीक्षक म.प्र. शासन क–खण्ड, तृतीय मंजिल, सतपुड़ा भवन, भोपाल (म.प्र.) 462004

क्रमांकः सी/2/30/786/मु.अ. /भोपाल, दिनांक 30–03–2010

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विषयः माइंस अधिनियम 1952 की धारा 2 परिभाषा (1)(j)(x)(xi) एवं म.प्र. विद्युत शुल्क अधिनियम 1949 की धारा 3 भाग (ख) में दी गई परिभाषा स्पष्टीकरण (ख) के अन्तर्गत देय विद्युत शुल्क के सम्बन्ध में।

सन्दर्भः माननीय उच्च न्यायालय इन्दौर खण्डपीठ में मेसर्स आशीष इन्टरप्राइजेस के प्रकरण क्रमांक डब्ल्युपी 1640/2007 का निर्णय।

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'मेसर्स आशीष इन्टरप्राइजेस प्रकरण क्रमांक डब्ल्युपी 1640/2007 विरूद्ध म.प्र. शासन एवं अन्य में माननीय उच्च न्यायालय इन्दौर खण्डपीठ द्वारा दिए गए निर्णय के तारतम्य में म.प्र. में विभिन्न विद्युत वितरण कम्पनियों की जानकारी से यह स्थिति स्पष्ट हुई है कि माईंस एक्ट 1952 की धारा 2 परिभाषा (1)(j)(x)(xi) के अन्तर्गत दी गई परिभाषा एवं म.प्र. विद्युत शुल्क अधिनियम 1949 की धारा 3(ख) में दी गई परिभाषा का आशय अलग अलग निकाला जा रहा है। फलस्वरूप स्टोन क्रशर उपभोक्ता के मामले में कुछ स्थानो पर औद्योगिक क्षेत्र में विद्युत शुल्क की दरें 3 प्रतिशत, 3.5 प्रतिशत, 4 प्रतिशत, 8 प्रतिशत, 15 प्रतिशत एवं 40 प्रतिशत ली जा रही हैं। यह प्रकरण शासन के समक्ष प्रस्तुत हुआ।

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उक्तानुसार यह स्पष्ट है कि स्टोन क्रशर के कार्य में निकाली गई माईंस सामग्री जिसको उपयोग खनिज को चूरा (क्रशिंग) करने, उसका प्रसंस्करण करने, अभिक्रियान्वयन करने या उसका परिवहन करने के लिए किया जाता है चाहे वह

माईंस के अन्दर हो या माईंस के बाहर किसी भी क्षेत्र में क्यों न हो, विद्युत शुल्क की दर 40 प्रतिशत की दर से देय होगी। यदि आपका क्षेत्र निर्गत का प्रतिशत से कम विद्युत शुल्क ली जा रही हो तो सम्बन्धित विद्युत वितरण कम्पनी से 10 दिन के भीतर सम्पर्क कर की गई कार्यवाही से अवगत करवायें तथा विगत वर्षों में यदि उनसे 40 प्रतिशत से कम विद्युत शुल्क वसूला गया हो तो अन्तर की राशि निकाली जाकर शासकीय कोष में जमा करना हो कार्यवाही कर अवगत कराए। ऐसे उपभोक्ता जिनसे 40 प्रतिशत से कम की विद्युत शुल्क ली जा रही है उनकी सूची एवं वसूली का विवरण निम्न प्रारूप में प्रस्तुत करें –

क्र	उपभोक्ता का नाम (स्टोन क्रशर, स्टोन, रेत आदि के कार्य में लगे)	वर्तमान में स्थापना कहॉ पर स्थापित है	ली जा रही विद्युत शुल्क का प्रतिशत	40 प्रतिशत से कम के अंतर की राशि	पत्र क्र. जिससे राशि निकाल कर संबंधित विद्युत वितरण कंपनी का लिखा गया
1	2	3	4	5	6

सही/–
मुख्य अभियंता (वि. सु.) एवं मुख्य विद्युत निरीक्षक
म.प्र. शासन''

46. In the circular, it is noted that on the basis of the information received from the Electricity Distribution Companies in pursuance of the order passed in **M/s Ashish Enterprises**'s case (**supra**) it is revealed that the two definitions envisaged under Section 2(1)(j)(x) and (xi) of the 1952 Act and Explanation (b) of Part-B of Section 3 of the 1949 Act are being misinterpreted, as a result of which, in cases of consumers of stone crushers at some places in industrial areas electricity charges are being levied at different rates i.e. @ 3%, 3.5%, 4%, 8%, 15% and 40%. The matter was placed before the Government and after considering the said two definitions, it is clarified in the circular that in the stone crushing work where the mining material is used for crushing; processing; treating or transporting the mineral, be it in or any area outside the mines, the electricity duty shall be payable at the rate of 40 percent. Accordingly, it was made clear that if in the area/jurisdiction of the addressees, the electricity duty is

being levied less than the said percentage then contact be made with the concerned Electricity Distribution Company and the action taken report be submitted within 10 days and in case, in the preceding years the electricity duty has been charged below the rate of 40 percent, the difference amount be calculated and deposited with the Government Treasury under intimation to the undersigned therein. Requisite information with regard to recovery from the consumers who were charged electricity duty less than the rate of 40 percent was also sought in a prescribed format.

47. From perusal of the circular dated 30.03.2010 it is not explicit as to on what basis and reasoning, the clarification was issued in the circular dated 30.03.2010 to include all the stone crushers whether situated in or adjacent or outside the mining area for the purposes of electricity duty @40% where the mining material or mineral was being used for its crushing, processing, treating or transporting. The circular only takes note of decision in **M/s Ashish Enterprises**'s case **(supra**) and that the matter with regard to levy of different rate of electricity duty to the stone crushers at some places in industrial area and different interpretation of definition of 'Mine" envisaged under explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j)(x) and (xi) of the 1952 Act being taken out, had come to the notice and the matter was placed before the State Government. There is nothing in the circular as to how and in what manner the provisions contained in Explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act have been considered and the decision was taken by the State Government. In this view of the matter, the circular dated 30.03.2010 which is in the realm of an administrative order cannot override the statute and is a wrong interpretation of definition of 'mine'

envisaged in Explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act. Thus, it is held that the circular dated 30.03.2010 is not the correct interpretation of Explanation (b) of Part B of Section 3(1) of the 1949 Act and Section 2(1)(j) of the 1952 Act.

48. Having answered the questions of law referred to for our opinion, the matters be now posted for hearing before an appropriate Bench as per roster.

(Ajay Kumar Mittal)	**(Sujoy Paul)**	**(Vijay Kumar Shukla)**
Chief Justice	Judge	Judge

S/