

A CRITICAL ANALYSIS OF RETROSPECTIVE TAXATION IN MINING INDUSTRY

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ABSTRACT

This paper examines the Supreme Court ruling of 2024 that allowed Indian states to impose and collect taxes from back date i.e retrospectively (royalty and cess) from April 2005 on mining activities. It analyzes the legal and constitutional framework (Income Tax Act, MMDR Act 1957, and fiscal federalism entries) governing such taxes, focusing on the Mineral Area Development Authority v. SAIL case which resolved long-standing disputes over royalty as tax. The economic impact on investors and companies is assessed, including investor sentiment, financial strain on mining firms, and ripple effects on allied sectors. We find that, while the decision reinforces state taxing powers and federal fiscal autonomy, it imposes massive, backdated liabilities (₹1.5–2 lakh crore) on mining companies, threatening investment and growth.

Keywords:

Retrospective taxation; mining royalty; India; income tax; MMDR Act 1957; fiscal federalism; investor sentiment.

Introduction

The Tax Amendments that impose Tax penalties or levy of tax from back date i.e. retrospectively have sparked a debate in India. The main reason could be that Indian Courts and Legislations do not expressly prohibit Retrospective Taxation, but such actions often clash with legal fairness. In 2024, in the case of Mineral Area Development Authority v. Steel Authority of India, a nine Judge Constitutional Bench held that State Governments may collect tax dues and royalty on Mineral Bearing lands from back date of April 2005, this judgement overturned 1989's India Cements v. Tamil Nadu judgement that had restricted state governments to impose royalty as a tax on mining activities. So, now mining industry is facing a huge financial burden due to such retrospective taxation.

Overview

I. Legal Framework

A. Income Tax Act and Constitutional Validity of Retrospective Taxation

India's Income Tax Act 1961 and tax law more generally have provisions for retrospective amendments. For example, the 2012 Finance Act amended Section 9(1)(i) to clarify that "indirect transfers" of Indian assets by foreign entities are taxable, effective from 1962. Courts have noted this amendment created a new tax liability on transactions that were legal when done¹⁷²⁸. Although Article 265 of the Constitution prohibits tax except by law, there is no *general* bar on retrospective legislation, as long as Parliament enacts a valid law. However, retrospectivity raises concerns under Article 14 (equality) of the Indian Constitution (about the rule-of-law),

¹⁷²⁸ Shubhajit Roy, India's Retrospective Taxation Blunder is Still Extracting Heavy Costs, Hindustan Times (Aug. 30, 2023), <https://www.hindustantimes.com/analysis/india-s-retrospective-taxation-blunder-is-still-extracting-heavy-costs/story-gg6EfpCj02UKZQdf1cKhzK.html> (last visited Sept. 21, 2025)

because it can deprive taxpayers of fair notice and stability.

Scholars observe that, if technically looked into the aspect of retrospective taxation, it falls within the legislative powers (as it is not expressly prohibited) but violates constitutional ideals such as legal clarity.

B. MMDR Act 1957: Royalty, Fees, Cess, and Ambiguity

The Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) centralizes regulation of mines. Section 9 of the MMDR Act requires mining leaseholders to pay royalty to the owner of the minerals (typically the State or local authority) at prescribed rates. For central (offshore) minerals, the Union government sets and collects royalty; for land minerals, the State or landowner receives royalty. Importantly, the Act itself has no provision for any additional tax or cess on minerals. Yet, many States historically imposed local cesses or duties on top of royalty (often under state local government laws). Whether these were lawful has been the subject of decades of litigation.

Before 2024, the legal status of royalty and related charges was ambiguous. In **India Cement v. Tamil Nadu (1989)**, a seven-judge Supreme Court held “royalty is a tax,” and struck down a Tamil Nadu cess on royalty as beyond state power¹⁷²⁹. Thus, until 2024, the sector operated under legal uncertainty: some courts allowed state levies on coal and minerals, others relied on India Cement to forbid them.

The MMDR Act itself defines royalty for uniformity but does not expressly limit states’ taxing power. Entry 50, List II of the Constitution permits states to levy “taxes on mineral rights,” subject to any limitations imposed by Parliament by law relating to mineral development. Entry 49 allows taxes on land (implicitly including mineral-bearing land). The key ambiguity was: did Section 9 or other MMDR

provisions constitute a Parliamentary “limitation” that barred states from taxing? Until 2024, the prevailing view was “no”: Section 9 merely fixed royalty and did not preclude separate taxes. This set the stage for the nine-judge bench.

Under 1957 Act, royalty is treated merely as a contractual fee not any state-imposed tax in respect to mineral rights. So, here the States’ contention was that they retained power to tax independently (Entry 50) as MMDR act does not have any explicit provision that negates state taxes. The Supreme Court’s 2024 judgement clarified that royalty is not a tax, overruling India Cements case, which said ‘royalty is a tax’. So royalty remains a fiscal instrument in the hands of centre under Section 9 (with rates set by Union Government).

C. Constitutional analysis: Impact of Fiscal Federalism

The decision in Mineral Area Dev. Auth. v. SAIL sparked debate between Constitutional entries and federal balance. The majority emphasized India’s federalism: states have sovereign legislative power within entries. Notably, Entry 50 (List II) is a taxing entry specifically for “taxes on mineral rights,” and is listed as subject to limitations by law relating to mineral development (i.e. Entry 54, Union List). The majority in 2024 interpreted this to mean: Parliament could impose limits by law (e.g. via MMDR Act), but in this case it did not impose an express ban on state taxes. Thus states retained full power to tax mineral rights.

Likewise, Entry 49 (tax on land and buildings) was held applicable to mineral-bearing land. The majority reaffirmed that land includes everything underneath it, so states can tax mineral land (using the value or yield of minerals as the tax measure) without violating the MMDR Act. This means double taxation (land tax plus mineral tax) is constitutionally permissible unless barred by a statute. The Court noted that the MMDR Act does not expressly limit Entry 49 taxes, so states may use land tax as a backstop to tax minerals.

¹⁷²⁹ Mineral Area Development Authority v. Steel Authority of India, SC Observer (July 18, 2023), <https://www.scobserver.in/cases/is-royalty-paid-by-mine-leaseholders-to-the-union-government-a-form-of-tax-mineral-area-development-authority-v-steel-authority-of-india/> (last visited Sept. 21, 2025)

In effect, the SC majority bolstered fiscal federalism: it declared that except where Parliament clearly limits it, state taxing powers (Entries 49 & 50, List II) stand coequal with union entries. The Union’s regulatory law (Entry 54) does not cover the field so as to nullify state taxes.

II. Case Analysis: Mineral Area Development Authority v. Steel Authority of India Limited (2024)

A. Facts: The case originated from the Bihar Coal Mines (Area Development) Authority Act (enacted in 1992), under which Mineral Area Development Authority (MADA) was created to fund local development by way of fiscal levy on coal companies. SAIL (a PSU) and other lessees challenged the levy as beyond Bihar’s power. Parallel disputes arose across India with similar levies on coal, iron ore, etc. These questions were referred to a nine-judge Constitutional Bench (the largest in Indian history).

B. Issues: The Bench was asked to resolve questions (MADA v. SAIL, 25 Jul. 2024), including:

(1) Is royalty under Section 9(3) MMDR Act a “tax”?

(2) Can states tax land (Entry 49) by value of minerals?

(3) Can royalty or dead rent be basis of state tax?¹⁷³⁰

C. Holding:

In an 8–1 majority (per Justice DY Chandrachud), the Court ruled that:

- Royalty is not a “tax” in nature. Citing economic and legal analysis, the majority held royalty is contractual consideration to the mineral owner. This

means India Cements’ statement that “royalty is a tax” was overruled. (Royalty remains governed by central law but is not a sovereign levy.)

- State legislatures do have power to tax mineral rights (Entry 50) and mineral-bearing land (Entry 49). The Court held that, subject to Parliament’s limitations, states can impose such taxes. Because the MMDR Act lacks express limiting provisions for state taxes, states retained these taxing powers.
- Entry 49 and 50 are mutually reinforcing. State tax on land (Entry 49) covers all land (including minerals underneath). States may use yield/royalty as the basis for a land tax, and can separately tax the mineral right under Entry 50.
- Retrospectivity: On 14 Aug 2024, the same bench held the judgment could be applied **retrospectively from April 1, 2005**¹⁷³¹. That is, states may collect levies dating back to that date, but not before (the cutoff of current constitutional amendments). The Court allowed arrears to be paid in installments over 12 years from April 2026, and waived interest/penalties on pre-2024 demands.

D. Reasoning:

The majority gave detailed constitutional reasoning, parts of which we highlighted above. They concluded that the legislative scheme of entries and of the MMDR Act did not bar state taxing power on minerals. They held that defining “royalty” in Section 9 as explicitly an income to the owner means it lies outside the category of “tax on mines and minerals” in Entry 50. Accordingly, the addition of state cesses or taxes on top of royalty was permissible. The Court also reasoned from basic principles: a private landowner can charge

¹⁷³⁰ Mineral Area Development Authority v. Steel Authority of India, Nature of Royalty Paid by Mine Leaseholders, SC Observer, <https://www.scobserver.in/cases/is-royalty-paid-by-mine-leaseholders-to-the-union-government-a-form-of-tax-mineral-area-development-authority-v-steel-authority-of-india/> (last visited Sept. 21, 2025)

¹⁷³¹ Rakesh Dwivedi & Vijay Hansaria, States’ Power to Tax: Retrospective Application in MADA v. SAIL, Supreme Court Observer, (Feb. 2024), <https://www.scobserver.in/wp-content/uploads/2024/02/States-power-to-tax-retrospective-mada-vs-sail-mineral-royalty.pdf> (last visited Sept. 21, 2025)

royalty in the ordinary course, so by parity the State (as landowner) can receive “royalty” even if it is payable to it; but that does not make royalty itself a tax.

Justice Nagarathna’s **dissent** (1 judge) disagreed on key points. She reasoned royalty satisfies the elements of a tax (compulsory payment, etc.) and was intended by Parliament to fill the field of mineral revenue through Section 9’s schedule. She interpreted Entry 50’s “subject to limitations by law” as meaning state taxes are subordinate to the MMDR Act’s regulatory law. In her view, states cannot tax mineral rights beyond royalty because the MMDR Act fixed a complete scheme. However, the dissent would also have applied the ruling retrospectively (though with a shorter cutoff) and allowed arrears collection as per existing law.

E. **Consequences:**

The practical outcome is sweeping: states are confirmed in taxing mines and minerals, and can recover decades of unpaid dues (on royalty, dead rent, cesses) for 2005–2024. Industry estimates the total arrears across India to be ₹1.5–2.0 lakh crore. Public sector companies (e.g. SAIL, NMDC, Coal India) alone face ₹70,000–80,000 crore, and private firms like Tata Steel and Vedanta list similarly large contingent liabilities¹⁷³². The ruling also ensures these dues carry no interest, and can be staggered (weighing financial strain). Legally, the case clears the way for uniform practice: all states may now enforce their mining laws without fear of being struck down (subject to time limits).

III. **Economic Perspective**

A. **Investor Sentiment**

The Supreme Court’s levy of taxes retrospectively has declined the investor confidence in the mining sector. The prospect of massive unanticipated tax bills creates

regulatory risk, likely deterring new investments. As one analyst put it, the “spectre of retrospective taxation hangs once again on India”¹⁷³³, undermining perceptions of policy stability.

Economic theory and past evidence suggest retrospective taxes chill investment: firms cannot plan when the tax regime itself can change retroactively. Here, many international and domestic investors in minerals now face landmark liabilities for contracts they assumed were governed by earlier law. Even with a 12-year payment plan, the uncertainty and capital diversion hurt growth. Surveyed industry experts note that even if coal and iron ore companies can eventually recover costs through higher prices, the policy shock makes capital more costly and may slow capacity expansion.

In short, investor sentiment in mining is impaired. Risk premia have risen and some projects may be shelved. The broader signalling effect is serious: analysts warn that not only mining but steel, power, and manufacturing could see higher costs and subdued investment due to this chain reaction. Globally, India’s image as a stable destination for resource investment has been dented by this move, reversing years of fiscal reforms.

B. **Financial Strain on Companies**

The immediate financial impact is heavy strain on mining companies’ balance sheets. Public-sector miners (SAIL, Coal India, NMDC) face ₹70–80k crore collectively, which will have to be paid out of reserves or new funding. The dues cover decades of royalty and tax shortfalls, effectively an unexpected debt. Even after allowing for twelve annual installments, these payments will significantly reduce capital available for operations, exploration, and modernization.

For private firms like Tata Steel, Vedanta, JSW etc., contingent liabilities in their financial

¹⁷³² Vasudha Mukherjee, Retrospective Taxes Set to Cost Mining Industry Rs. 1.5 Trillion in Arrears, Bus. Standard (Aug. 15, 2024), https://www.business-standard.com/industry/news/retrospective-taxes-set-to-cost-mining-industry-rs-1-5-trillion-in-arrears-124081500174_1.html (last visited Sept. 21, 2025)

¹⁷³³ Spectre of Retrospective Taxation Hangs Again: EAC-PM Member on Mining Royalty Verdict, Econ. Times (India) (Aug. 14, 2024), <https://economictimes.indiatimes.com/news/economy/policy/spectre-of-retrospective-taxation-hangs-again-eac-pm-member-on-mining-royalty-verdict/articleshow/112530794.cms?from=mdr> (last visited Sept. 20, 2025)

statements have ballooned (Tata Steel alone noted ₹17,300 crore)¹⁷³⁴. The burden also comes with compliance costs: companies must audit years of operations to accurately compute dues, raising legal and accounting costs. Some may seek legal recourse or tax relief (though given the Supreme Court's ruling, options are limited).

Moreover, there are opportunity costs: funds that would have gone to expansion or debt reduction will be diverted to pay retro taxes. Over time, this could impair growth and profitability. In aggregate, the ruling effectively transfers wealth from the corporate sector to state governments, tightening company cash flows. Power and steel companies (whose raw materials include coal/iron) have already started forecasting higher input costs. The Indian Express reported that analysts expect costs of primary goods (iron ore for steel) to rise, making sectors less competitive.

C. Sectoral Ripple Effect

The ripple effects extend beyond mining companies. Mining inputs underpin critical industries: increased royalties/taxes will inflate raw material prices. For example, power plants burning coal may face higher fuel costs and attempt to pass them on to consumers through tariff adjustments. Likewise, steel producers will incur higher ore costs, due to which there are possibilities that the burden of this retrospective tax may come on the shoulders of final consumer.

On the fiscal side, states stand to gain significant revenue. They have touted the decision as bolstering funds for welfare programs: indeed, the Bihar government and others have argued they have a right to decades of revenue. However, the sudden haul of revenues will tax state treasuries' capacity to absorb and utilize them. Moreover, if industries

cut back production, state growth and revenues could suffer longer-term.

In macro terms, the judgment may also influence foreign investors' views on Indian federalism and the sanctity of contracts. By upholding state autonomy, the Court strengthened fiscal federalism; but by allowing retroactivity, it introduced policy risk. Business groups have cautioned that this could dampen India's attractiveness for mining-related capital, which in turn might slow job creation and development in mining regions.

IV. Findings

The analysis yields the following key findings:

A. Legal Finding:

The Supreme Court's decision reaffirmed that under current law (MMDR Act and the Constitution), states have full power to tax mines and minerals (entries 49–50, List II). Royalty under the MMDR Act is not a tax but a contractual payment.

B. Retrospective Finding:

Crucially, the Court allowed its ruling to apply retroactively from April 1, 2005¹⁷³⁵. This creates legal certainty going forward but also imposes retrospective liabilities. The Court mitigated harshness by waiving interest/penalty and permitting installment payments, but nonetheless mining dues become enforceable.

C. Economic Finding:

The immediate economic effect is severe strain on the mining sector. Companies face back payments in the order of 1.5–2 lakh crore rupees¹⁷³⁶. This burden will likely hinder investment, as feared by regulators and market

¹⁷³⁴ Vasudha Mukherjee, Retrospective Taxes Set to Cost Mining Industry Rs. 1.5 Trillion in Arrears, Bus. Stan. (Aug. 15, 2024), https://www.business-standard.com/industry/news/retrospective-taxes-set-to-cost-mining-industry-rs-1-5-trillion-in-arrears-124081500174_1.html (last visited Sept. 21, 2025)

¹⁷³⁵ Advay Vora, Nature of Royalty Paid by Mine Leaseholders, Supreme Court Observer, <https://www.scobserver.in/cases/is-royalty-paid-by-mine-leaseholders-to-the-union-government-a-form-of-tax-mineral-area-development-authority-v-steel-authority-of-india/> (last visited Sept. 21, 2025)

¹⁷³⁶ Indu Bhan, Spectre of Retrospective Taxation Hangs Again: EAC-PM Member on Mining Royalty Verdict, The Economic Times, (Aug. 14, 2024), <https://economictimes.indiatimes.com/news/economy/policy/spectre-of-retrospective-taxation-hangs-again-eac-pm-member-on-mining-royalty-verdict/articleshow/112530794.cms> (last visited Sept. 20, 2025)

participants. Investor confidence has already dipped, with stock market indices reflecting risk premiums. The broader economy may see upward pressure on prices in metals, power and construction, as well as downstream contract disputes.

D. Investor Sentiment:

The climate for investment in Indian mining has become more uncertain. Although state revenues will increase, investors now perceive a higher regulatory risk. At least one analysis warns this policy is “penny-wise and pound-foolish” because extracting retro revenue costs more in lost confidence than it gains¹⁷³⁷.

Overall, retrospective taxation of mining reflects a tension between constitutional fiscal federalism and economic policy stability. The Court’s ruling clearly leans toward giving states the benefit of doubt in taxing powers, even at the cost of retrospective effect.

V. Suggestions and Conclusion

A. Suggestions:

To balance state revenue needs with economic stability, we suggest:

- 1. Phase mechanism:** State governments might consider phasing in the backdated amounts more gradually than 12 years, or cap liabilities for certain players (especially PSUs) to avoid bankruptcies.
- 2. Clear rules:** Parliament could enact clarifications in the MMDR Act or relevant state laws to specify the computation and limits of state mining taxes, reducing future disputes.
- 3. Safeguards for investors:** Introduce compensatory mechanisms (e.g. tax

credits or exemptions) to offset some of the retrospective burden, preserving overall investment viability.

- 4. Engage stakeholders:** Governments should work with industry to plan forward, improving transparency in how mining revenues are used (so the public benefits are clear).

Conclusion

Retrospective taxation in the mining sector has profound legal and economic dimensions. Legally, India’s highest court has now sanctioned a broad reading of states’ taxing authority (by declaring royalty not a tax) while permitting historic collection. Economically, this creates a chaos: mining companies are now compelled to pay enormous retroactive dues, and investors may think twice before investing in mining projects. Also sometimes mining sector may directly be connected with infrastructure projects, which may also affect growth in many other sectors too. In the end, while states’ rights are protected, India must also safeguard the rule-of-law principles that attract capital, ensuring taxation is fair, transparent, and prospective to the extent possible.

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