



W.P.(MD) No.11649 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.11649 of 2024
and
W.M.P.(MD) No.10390 of 2024**

G.V.Granites,
No.19/77, Muslim Street,
Thogaimalai, Kulithali Taluk,
Karur 621 313, By its Partner,
P.Velusamy

... Petitioner

/vs./

1.The Additional Commissioner (Appeals),
O/o. the Commissioner of GST and Central
Excise (Appeals) Coimbatore,
Trichy Circuit Office,
No.1, Williams Road, Cantonment,
Trichy 620 001.

2.The Superintendent of GST and Central Excise,
Karur V Range,
Karur Division, No.15,
Gowripuram,
Anna Nagar, Karur 639 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for



W.P.(MD) No.11649 of 2024

WEB COPY

issuance of Writ of Certiorari, calling for the records of the First Respondent ending with order passed by the First Respondent in Appeal A.No.52/2022-GST-TRY (GST) dated 22.12.2023 and quash the same.

For Petitioner : Mr.S.Dhayaleswaran

For Respondents : Mr.R.Nandhakumar
Senior Panel Counsel

ORDER

The petitioner has filed this writ petition for a Certiorari to quash the order of the first respondent dated 22.12.2023 passed in A.No.52/2022-GST-TRY (GST).

2.Although the writ petition is listed today under the caption 'for reporting compliance' of the order dated 11.06.2024, it is noticed that since the issue is pending before the Hon'ble Supreme Court, the Hon'ble Division Bench of this Court by its order dated 08.01.2024 pursuant to the order dated 04.01.2021 of the Hon'ble Supreme Court in Writ Petition (Civil) No.1076 of 2021, had ordered as follows:



W.P.(MD) No.11649 of 2024

WEB COPY

“9. In these circumstances, we deem it fit and appropriate to issue the following directions:

(i) In the cases, where the challenge is made to the show cause notices, the writ petitioners shall submit their objections / representations within a period of four weeks from the date of receipt of a copy of this order.

(ii) Upon receipt of the objections / representations from the writ petitioners, the authority concerned shall proceed with the adjudication, on merits and in accordance with law, after affording reasonable opportunity of being heard to the petitioners. However, the orders of adjudication shall be kept in abeyance until the Nine Judge Constitution Bench decides the issue as to the nature of royalty.

(iii) It is made clear that there shall be no recovery of GST on royalty until the Nine Judge Constitution Bench takes a decision.

(iv) Needless to state that on the matters being decided, the writ petitioners if still aggrieved, shall redress their grievance(s), if any, before the appropriate forum, including by filing appeal(s).

(v) Insofar as the challenge to the notification as well as the circular, it is open to the writ petitioners to act upon, after the outcome of the case pending before the Nine Judge Constitution Bench.

(vi) It is also made clear that all the contentions are left open for the writ petitioners to raise in appropriate proceedings, after the outcome of the decision of the Nine Judge Constitution Bench.”

3. Under these circumstances, the impugned order, which confirms the levy of service tax on the petitioner and the mining activity carried out by the petitioner, shall be kept in abeyance. Therefore, this Writ Petition stands disposed of by giving liberty to the petitioner to file a statutory appeal before the Appellate



W.P.(MD) No.11649 of 2024

Commissioner within a period of 30 days from the date of receipt of a copy of this order. There shall be however no further pre-deposit as the Hon'ble Supreme Court has stayed the recovery of GST on mining lease for royalty. The Appellate Commissioner shall dispose of the appeal subject to the final outcome of the appeal before the Hon'ble Supreme Court.

4.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes / No
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15.07.2024



WEB COPY



W.P.(MD) No.11649 of 2024

C.SARAVANAN, J.

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W.P.(MD) No.11649 of 2024

15.07.2024