

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No. 5220/2016.

M/s. Shri Sai Minerals .-**VERSUS-** State of Maharashtra and others. WITH

WRIT PETITION No. 694/2017.

M/s. S.L.K. Infrastructure .-**VERSUS-** State of Maharashtra and others. WITH

WRIT PETITION No. 593/2017.

M/s. Sai Stone Crusher .-**VERSUS-** State of Maharashtra and others. WITH

WRIT PETITION No. 688/2017.

. Shri Bijwe Stone Crusher .-**VERSUS-** State of Maharashtra and others. WITH

WRIT PETITION No. 791/2017.

M/s. Shri Govindkrupa Stone Crusher .-**VERSUS-** State of Maharashtra and others. WITH

WRIT PETITION No. 6683/2016.

M/s. Gayatri Minerals .-**VERSUS-** State of Maharashtra and others. WITH

WRIT PETITION No. 6684/2016.

M/s. Banwarilal R. Kabra .-**VERSUS-** State of Maharashtra and others. WITH

WRIT PETITION No. 6685/2016.

M/s. S.N. Enterprises .-**VERSUS-** State of Maharashtra and others. WITH

WRIT PETITION No. 6686/2016.

Shree Stone Crusher .-**VERSUS-** State of Maharashtra and others. WITH

WRIT PETITION No. 6072/2016.

M/s. Siddheshwar .-**VERSUS-** State of Maharashtra and others. WITH

WRIT PETITION No. 6030/2016.

M/s. Pawanputra Buildcon pvt. Ltd. .-**VERSUS-** State of Maharashtra and others. WITH

WRIT PETITION No. 6147/2016.

M/s. Sai Stone Industries .-**VERSUS-** State of Maharashtra and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : B.P. DHARMADHIKARI &
MRS. SWAPNA JOSHI, JJ.

DATE : MARCH 07, 2017.

Heard Shri A.B. Moon, Shri R.M. Tahilyani,
learned Counsel for petitioners and Ms. T. Khan,

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learned A.G.P. for respondents.

2. It is not in dispute that in so far as law on the point is concerned, the same is concluded by judgment delivered on 18.03.2016 in Writ Petition No.137/2015.

3. Matters were listed before this Court on earlier occasion and were adjourned to enable the respondents to obtain instructions. Reply has been filed in Writ Petition No.5220/2016.

4. In one of the hearing question raised was – Whether judgment dated 18.03.2016 in Writ Petition No.137/2015 has attained finality ?

Shri Moon, learned Counsel for petitioners has submitted that he appeared in that matter also and that judgment has been implemented and acquiesced into. We gave time to learned A.G.P. to find out whether the Hon'ble Supreme Court has been approached against that judgment. Today learned A.G.P. submits that no Special Leave Petition has been filed against that judgment.

5. The Package Incentive Scheme, 2007 provides for refund of royalty, as per clause 5.5 contained in government resolution dated 30.03.2007.

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In judgment delivered on 18.03.2016 claim of petitioner was to discharge that obligation by refunding royalty. Defence of respondents was the policy did not permit refund of royalty of minor minerals. This Court has found that 2007 Scheme or any clause therein does not make any such distinction of minerals into major minerals or minor minerals. The Court therefore, found that without appropriately modifying said resolution, that too retrospectively, claim for refund of petitioner in Writ Petition No.137/2015 could not have been declined. Accordingly this Court has allowed that Writ Petition. One of us (B.P. Dharmadhikari, J) is party to that judgment.

6. In present bunch of petitions, in so far as the petitioners in Writ Petition Nos. 5220/2016, 694/2017 and 791/2017 are concerned, royalty has been refunded to them in commercial years 2008-09, 2009-10. Figures of amount refunded vary. We need not go into these niceties.

7. In Writ Petition No.6030/2016, refund of claim for financial year 2008-09 has been sanctioned, but, payment has not been made.

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8. In remaining matters, petitioners are not aware of any decision, as nothing has been communicated to them. However, Shri Tahilayani, learned counsel contended that because of confusion that clause 5.5 does not apply to minor minerals, the claims are not being processed.

9. Learned A.G.P. reiterates that stand taken in defence in Writ Petition No.5220/2016. According to her, in matters where refund had already been made for some years, the eligibility may not be in dispute. However, where there is refund or no refund, the claims made by petitioners may require scrutiny to find out whether they comply with the said terms and conditions and qualify for the benefit.

10. In the light of judgment dated 18.03.2016 delivered in Writ Petition No.137/2015, and for reasons recorded therein, we declare that the royalty refund cannot be denied to petitioners only on the ground that mineral purchased by them is minor mineral.

11. Accordingly, we direct respondents to examine the request for refund made by each petitioner on merits to find out whether their units

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meet with the requirements of Package Incentive Scheme, 2007. This exercise be completed within a period of two months from the date of communication of this order. The amount found due and refundable, shall then be returned to the concerned petitioner within next two months. Acceptance of that amount shall not preclude the petitioners from challenging the correctness of the exercise undertaken by the respondents.

12. With these directions, we partly allow Writ Petitions and dispose of the same. No cost.

JUDGE

JUDGE

Rgd.