IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 21.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.35481 of 2004
and
M.P.No.42753 of 2004

M/s.Gem Granites,
Rep by its Partner,
Mr.S.R.Asaithambi,
No.76, Cathedral Road,
Chennai - 600 086. ...Petitioner

Vs

The District Collector,
Krishnagiri District,
Krishnagiri. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, call for the records pertaining to the respondent's proceedings bearing Roc.1312/2001 (Mines-1) dated 07.11.2004 quash the same and direct the respondent to refund to the petitioner a sum of Rs.1,00,000/- deposited by the petitioner pursuant to the order of this Hon'ble Court in W.P.No.14574 of 2001 together with interest.

For Petitioner : Mr.K.Ramakrishna Reddy

For Respondents: Mr.S.Suresh Kumar
Government Advocate

O R D E R

The order under challenge in the present writ petition is to a penalty imposed under rule 36A(5) of the Tamil Nadu Minor Mineral Concesion Rules 1955.

2.The brief facts of the case is that the Tashildar herein, intercepted the lorry bearing Registration No.TN 22-C 9189 on 07.11.2004 and found granite blocks of certain measurement which did not tally with the original measurement in the despatch slips and thereby recommended for levying penalty as per TamilNadu Minor Mineral Concession Rule. On receipt of the report, the granite blocks were measured and the volume of the rock was found to be as follows:-

Block No	Measurement as per cash memorandum issued By DMG Trivandrum	Measurement taken by Tahsildar during the time of seizure of lorry
214	201x120x73 =1.761 CBM	209x122x74 =1.887 CBM
263	206x121x70 =1.745 CBM	215x124x69 =1.840 CBM
270	240x126x108=3.266 CBM	244x127x114=3.533 CBM
367	246x116x97 =2.768 CBM	245x118x92 =2.66.0CBM

Thus the respondent came to the conclusion that the granite blocks transported through the vehicle were not the original granite block as mentioned in the despatch slip and thereby imposed a penalty through order dated 07.11.2004 which is impugned order in the present writ petition.

3.The learned counsel for the petitioner submitted that the granite blocks were quarried in the state of Andhra Pradesh and necessary seigniorage fee has also been paid to the Government of Trivandrum. Since, the TamilNadu Minor Mineral Concession Rules alone is applicable in the instant case, the respondents are not justified in invoking the provisions of TamilNadu Minor Minerals Concession Rules. The learned counsel has also relied upon the decision of the Hon'ble Supreme Court reported in (2017)9SCC (316) for this proposition.

4.The learned Government Advocate on the other hand submitted that the blocks loaded in the lorry were found to be different from the original measurement and therefore the respondent was right in imposing the penalty by invoking the TamilNadu Minor Mineral Concession Rules.

5.Section 21(4A) of the Minor Minerals (Development and regulations) Act 1957 regulates the mines and transportation of minerals which will be applicable throughout the nation. Apart from the said provisions, rule 365(B) of the Tamil Nadu Minor Minerals Concession Rules provides that all vehicle transporting any mineral from any area shall be in possession of the individual despatch slips for the quantity of minerals in the vehicle at the time of transport by vehicle. In the instant case, the specific case of the respondent is that the granite blocks loaded in the lorry did not tally with the despatch slips. Therefore, the respondent had come to the conclusion that the materials in the lorry during the seizure was different from the materials in the despatch slips. Since rule 36(5)(B) of the TamilNadu Minor Minerals Concession Rules stipulates that, all the vehicles used for transportation of Minor Minerals from any area should be in possession of individual despatch slips for the quantity of minerals available in the vehicle, at all times of transportation of the mineral by the vehicles, the excess quantity which has now been transported, is clearly in violation of such rule. Therefore, in view of the provisions of the Central Act u/s.214 and 214(A) of the Minor Minerals Act read with rule 365 (B) of the Tamil Nadu Minor Mineral Concession Rules, it cannot be said that the respondent had acted in contravention of the Tamilnadu Minor Minerals Concession Rules. In view of the same, the submission of the learned counsel for the petitioner that the provisions of the said rules in the Tamil Nadu Minor Minerals Concession Rules will not apply is incorrect.

6.The decision relied upon the learned counsel for the petitioner in (2017)9 SCC (316) [State of Kerala Vs.Jossy Sequeria] is on different proposition wherein, the confiscation order made under Section 61-A of the Kerala Forest Act, 1961 was under challenge. The decision does not lay down the proposition that is involved in the instant case and as such, it will be of no help to the petitioner. Hence, I do not find any merits. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

jas/jrs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The District Collector,
Dharmapuri District,
Dharmapuri.

+1cc to Mr.K.Ramakrishna Reddy, Advocate, SR.No.27169
+1cc to the Govt.Pleader, Vide Sr.No.27456

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Kak(16/07/2019)