IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 20432 of 2010
and
M.P.s 2 & 3 of 2010

J.Jayaram ... Petitioner

Vs

1. The District Collector,
   Erode District,
   Erode.

2. The Tahsildar,
   Sathyamangalam,
   Erode District. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the proceedings of the 1st respondent having Ref.R.C.No.111552/22/96 X2 dated 17.03.1997 and the consequential proceedings of the 2nd respondent having Reference No.C.P.12/2002/A4, dated 24.08.2010 and quash the same as without authority of law and not saved by the Cesses and other Taxes on Minerals (Validation) Act of 1992.

For Petitioner : M/s. C.Uma

For Respondents : Mr.J.Ramesh,
Addl. Govt. Pleader

O R D E R

This Writ Petition has been filed challenging the impugned order of the 1st respondent having Ref.R.C.No.111552/22/96 X2 dated 17.03.1997 and the consequential proceedings of the 2nd respondent having Reference No.C.P.12/2002/A4, dated 24.08.2010 and quash the same as without authority of law and not saved by the Cess and other Taxes on Minerals (Validation) Act of 1992.

2. The case of the petitioner is that the petitioner's father was granted a mining/quarrying lease for mining black granite in an extent of 0.90 hectares in Talamalai Village in

Sathyamangalam Taluk, Periyar District (now Erode District). The lease was for the period from 1987 to 1989. The petitioner's father has paid the lease, rent and royalty for the minerals quarried during the period of lease. The petitioner's father passed away in the year 1993. Now, the petitioner, who is son of lessee has received a notice dated 24.08.2010 from the 2nd respondent herein informing that since the petitioner's father has expired, the petitioner being the legal heir of Mr.Javaraiah is liable to pay a sum of Rs.2,72,849/- towards local cess and local surcharge on royalty, lease, etc. and directing the petitioner to pay the said amount immediately. The notice has been issued under the Revenue Recovery Act and the notice issued by the 2nd respondent referred to the proceedings of the 1st respondent dated 17.03.1997. By the said proceedings, the 1st respondent without knowledge of death of the petitioner's father Javaraiah in the year 1993, a direction was issued to a death person to pay a sum of Rs.1,16,433/- as arrears of local cess and local surcharge and interest for the periods 1987-1988 to 1989-1990. The proceedings of the 1st respondent referred to the enactment of Cesses and Other Taxes on Minerals Validation Act, 1992. Challenging the said order, the present Writ Petition has been filed by the petitioner.

3. Ms.C.Uma, learned counsel appearing for the petitioner would submit that in order to validate the Cesss levied by varius State Legislatures, the Parliament passed the Cess and other Taxes on Minerals (Validation) Act, 1992 validating the cess levied and upto 04.04.1991 by the respective State Legislatures. Section 2 of the Act, by legal fiction purported to have enacted the provisions of the Acts mentioned in the schedule keeping the provisions of such acts to have remained in force upto 04.04.1991. The said tax was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court in a decision reported in (2001) 7 SCC 358 in the case of District Mining Offier v. Tata Iron and Steel, has made it clear that the Validation Act of 1992 validated only the cess levied and collected and also held that the collection after 04.04.1991 of any tax, which had become due, but was not collected to that date would be violation of Art. 265 and 300A of the Constitution of India. Hence, the present case is squarely applicable to the decision as stated supra. Further, the notice issued against a death person, which is unsustainable one. Accordingly, she prayed to allow the Writ Petition.

4. Mr.J.Ramesh, learned Addl. Government Pleader appearing for the State did not dispute the fact submitted by the learned counsel appearing for the petitioner and he prayed to pass appropriate orders.

5. In view of the decision cited supra, the issuance of notice after 04.04.1991 is unsustainable one. However, in the present case, the impugned notice was issued against a death person after 04.04.1991. Hence, the action of the respondents is bad in law and it is not sustainable one. Therefore, the proceedings of the 1st respondent having Ref.R.C.No.111552/22/96 X2 dated 17.03.1997 and the consequential proceedings of the 2nd respondent having Reference No.C.P.12/2002/A4, dated 24.08.2010 are set aside. Accordingly, the present Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petitions are also closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1. The District Collector,
Erode District,
Erode.

2. The Tahsildar,
Sathyamangalam,
Erode District.

+1 CC to The Govt. Pleader sr 70832.
+1 CC to M/s.C. Uma, Advocate sr 70519.

W.P. 20432 of 2010
and
M.P.s 2 & 3 of 2010

SSD(CO)
SP(27/09/2019)