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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.9369 OF 2022

Bhausahab R. Jadhav

...Petitioner

V/s.

State of Maharashtra & Anr.

...Respondents

Mr.Shrirang Katneshwarkar with Mr.Deepak Pote for the Petitioner.

Ms.Kavita N. Solunke, AGP for the State – Respondent Nos.1 and 2.

CORAM : R.D. DHANUKA &

S.G. DIGE, JJ.

DATE : 29TH NOVEMBER, 2022.

P.C. :-

1. Rule. Ms.Solunke, learned AGP waives service for the respondent nos.1 and 2. Rule is made returnable forthwith.
2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing and setting aside the impugned order dated 10th June, 2022 passed by the respondent no.2 and seeks a writ of mandamus to release the vehicle bearing registration No.MH-15 FE – 6983 without further delay.
3. The petitioner is engaged into the business of supply and transport of building material and has his own vehicle truck. It is the

case of the petitioner that as per the demand of the purchaser in Nashik, and as the required quality of sand was available at Nizar, District Tapi, in the state of Gujarat, the petitioner bought the sand and proceeded into the limits of Maharashtra State. Since the District Squad did not find ETP (Zero royalty pass) with the petitioner, the respondents imposed 10% royalty.

4. Learned counsel for the petitioner submitted that the petitioner had already obtained a permit from the Gujarat RTO. The petitioner was not required to pay any royalty under the circular dated 5th February, 2021, as sought to be invoked by the respondents while demanding the payment of royalty. He placed reliance on the judgments of the Nagpur Bench of this Court delivered on 7th April, 2022 in Writ Petition No.2078 of 2021 in case of **M/s.Shree Rajesh Pathak vs. State of Maharashtra & Ors.** and also the judgment delivered by the Division Bench of Aurangabad Bench of this Court on 26th April, 2022 in Writ Petition 4397 of 2022 in case of **Vishal Babasaheb Dube @ Dhube vs. State of Maharashtra & Anr.** and submitted that this Court in both the judgments has already held that the respondents cannot collect any royalty under 'clause 5' of the said circular dated 5th February, 2021. This Court has held clause no.5 of the said circular as bad in law since the State Government has not been conferred with any authority or power to demand contribution to

the DMF of the district on the entry and consequent transport of minor minerals within the State of Maharashtra. It has already been held by this Court that clause 5 of the said circular dated 5th February, 2021 will not operate on the ground of being excessive and travelling beyond the rule making power of the State of Maharashtra. The said circular shall operate excluding clause 5.

5. In our view, the order is based on clause 5 of the said circular dated 5th February, 2021. The facts are identical to the facts before this Court in case of **M/s.Shree Rajesh Pathak vs. State of Maharashtra & Ors.** and **Sudarshan Rajkumar Badgujar vs. State of Maharashtra & Ors.**, thus, we are respectfully bound by the principles laid down in both the judgments.

6. Ms.Solunke, learned AGP for the respondents could not distinguish any of these judgments and also could not dispute that the recovery sought by the respondents from the petitioners was based on clause 5 of the said circular, which is held bad in law by this Court in the aforesaid two judgments.

7. In our view, the levy proposed by the respondents is thus without jurisdiction. The action on the part of the respondents to detain the vehicle registration No.MH-15 FE – 6983 is also without jurisdiction.

8. We accordingly pass the following order :-

- i). The writ petition is allowed in terms of prayer clause (B).
The vehicle of the petitioner described in prayer clause (B) of the petition shall be released within one week from today.
- ii). Rule is made absolute accordingly. There shall be no order as to costs. Parties to act on the authenticated copy of this order.

(S.G. DIGE, J.)

(R.D. DHANUKA, J.)