IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.Nos.24169, 29334, 29342, 29387 & 29394 of 2018
and
W.M.P.Nos. 28168, 28169, 34283, 34286, 34292, 34295,
34344, 34347, 34352 & 34355 of 2018

AAPT Distribution Private Limited,
rep. by its Director ... Petitioner in W.P.No.24169 of 2018

M/s. Stone Trust Enterprises,
rep. by its Partner
K.P.Mithun Kumar ... Petitioner in W.P.No.29334 of 2018

M/s.Arkay Glenrock Pvt. Ltd.,
rep. by its Director E.Anuradha ... Petitioner in W.P.No.29342 of 2018

M/s.Milestone,
rep. by its Partner R.Shankar ... Petitioner in W.P.No.29387 of 2018

M/s.Freeworld Exports Pvt. Ltd.,
rep. by its Director R.Shankar ... Petitioner in W.P.No.29394 of 2018

Vs.

1. State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Industries (MMD-1) Department,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Tamil Nadu Minerals Limited,
rep. by its Authorised Signatory,
31, Kamarajar Salai,
Chepauk, Chennai-600 005. ... Respondents in all W.P.s

Prayer in W.P.No.24169 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned demand issued by the 2nd respondent to the tune of Rs.25,35,111/- in respect of the debit note Nos. 9, 11, 15, 32, 33, 34, 40 and 75/2018-2019 and quash the same and consequently forbearing the 2nd respondent herein from adjusting the demand raised by the 2nd respondent to the tune of Rs.25,35,111/- from the deposit, which are available with the 2nd respondent in respect of the ongoing contracts of the petitioner.

Prayer in W.P.No.29334 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned demand issued by the 2nd respondent on 21.06.2018 to the tune of Rs.23,15.307.68/- in respect of the debit note Nos. 8, 13, and 14/2018-2019 and quash the same and consequently forbearing the 2nd respondent herein from adjusting the demand raised by the 2nd respondent to the tune of Rs.23,15,307.68/- from the deposit, which are available with the 2nd respondent in respect of the ongoing contracts of the petitioner.

Prayer in W.P.No.29342 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned demand issued by the 2nd respondent on 15.06.2018 and 19.06.2018 to the tune of Rs.9,22,893/- in respect of the debit note Nos. 42,41,69, 70 & 71/2018-2019 and quash the same and consequently forbearing the 2nd respondent herein from adjusting the demand raised by the 2nd respondent to the tune of Rs.9,22,893/- from the deposit, which are available with the 2nd respondent in respect of the ongoing contracts of the petitioner.

Prayer in W.P.No.29387 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned demand issued by the 2nd respondent on 04.07.2018 to the tune of Rs.1,14,726/- in respect of the debit note No.101/2018-2019 and quash the same and consequently forbearing the 2nd respondent herein from adjusting the demand raised by the 2nd respondent to the tune of Rs.1,14,726/- from the deposit, which are available with the 2nd respondent in respect of the ongoing contracts of the petitioner.

Prayer in W.P.No.29394 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned demand issued by the 2nd respondent on 15.06.2018 etc. dated to the tune of Rs.12,65,727/- in respect of the debit note Nos. 47,56,57,58 & 88/2018-2019 and quash the same and consequently forbearing the 2nd respondent herein from adjusting the demand raised by the 2nd respondent to the tune of Rs.12,65,727/- from the deposit, which are available with the 2nd respondent in respect of the ongoing contracts of the petitioner.

For Petitioner in all W.P.s	:	Mrs.A.L.Ganthimathi
For Respondents in all W.P.s	:	Mr.B.Vijay, Addl. Govt. Pleader for R1
		Mrs.Srijayanthi for R2

C O M M O N O R D E R

These Writ Petitions have been filed challenging the debit notes issued by the 2nd respondent Tamil Nadu Minerals Limited (TAMIN) debiting the amount from the petitioner towards payment of District Minerals Fund.

2. The grievance of the petitioners is that, the 2nd respondent TAMIN was the lessee for quarrying granites from the 1st respondent and the petitioners have purchased granites from 2nd respondent TAMIN. While issuing debit notes, the 2nd respondent has debited huge amount towards payments of District Mineral fund, under the Tamil Nadu District Mineral Foundation Rules, 2017 [Rules]. The contention of the petitioners is that, as the petitioners are only purchasers of granites from 2nd respondent TAMIN, under the above rules, the 2nd respondent TAMIN is only liable to pay District Minerals Fund to the Government and they cannot pass on their liability to the petitioners. That apart, as the rule came into force from 19.05.2017, it will apply prospectively, however, the 2nd respondent debited the amount even prior to the commencement of Rules. Hence, they have no power to collect the amount retrospectively, and challenging the same, the present Writ Petition has been filed.

3 Mrs.Srijayanthi, learned counsel appearing for 2nd respondent TAMIN relying upon the agreement entered into between the parties, especially referring to clause 4 of the agreement stating that, the purchasers are liable to pay the seignorage fee actually paid for the blocks to the authorities, apart from value added tax and all other Government levy charges etc., and submitted that under the said clause, only purchasers have to

pay all the taxes imposed by the Government. The Mineral Fund is also one of the levy and only the purchasers have to pay.

4. Mr. B.Vijay, learned Addl. Government Pleader appearing for 1st respondent would submit that, even though the Supreme Court has directed to frame rules from 12.01.2015, the rules were framed only on 19.05.2017. The learned counsel has produced the copy of order passed by the Division Bench of this Court and would fairly submit that, the liability to pay to the fund only with effect from 19.05.2017.

5. Heard and considered rival submissions made by learned counsel appearing for both sides and perused the records.

6. The first grievance of the petitioners is that, the 2nd respondent TAMIN has no power to pass on the liability to the purchasers of granites from them. Perusal of the agreement entered into between the parties, it could be seen that, the Purchasers have agreed to pay the Government levies apart from seigniorage fee, the value added tax and any other charges. The relevant portion of the agreement reads as follows :-

> "4. Price :- .... The seigniorage fee per cbm actually paid for the blocks to the permit issuing authority for dispatch VAT under VAT Act and any other Government levies loading charges etc. are as applicable extra from time to time."

In the said circumstances, the District Mineral Fund is also one of the tax levied by the Government and hence, the purchasers have to pay the amount to the Fund.

7. So far as next submission for collecting District Mineral Fund retrospectively is concerned, even though Sec.9(b) of Mines and Minerals Development Amendment Act came into force on 12.01.2015, enabling the State Government to collect District Mineral Fund, the Rule came into force only on 19.05.2017 and from that date only, they are entitled to collect for the fund. The Hon'ble Supreme Court of India, in the case of Federation of Indian Mineral Industries and others vs. Union of India and another, reported in 2017 (16) SCC 186, has held as follows :-

> "52.5. Contributions to the DMF are required to be made by the holder of a mining lease or a prospecting license-cum-mining lease in the case of coal, lignite and sand for stowing with effect from 20.10.2015 when the rates were prescribed by the Central Government or with effect from the date on which the DMF was established by the State Government by a notification, whichever is later."

8. Considering the facts and circumstances, the 2nd respondent TAMIN only is entitled to collect District Mineral Fund only with effect from 19.05.2017. However, on perusal of debit notes issued by the 2nd respondent, it could be seen that they have started collecting District Mineral Fund with effect from 12.01.2015, which is not permissible. In the above circumstances, the debit notes issued by the 2nd respondent are partly set aside and the 2nd respondent is entitled to collect District Mineral Fund only with effect from 19.05.2017, and the amount if any, already collected by the 2nd respondent should be refunded to the petitioner. Accordingly, these Writ Petitions are partly allowed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Industries (MMD-1) Department,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Authorised Signatory,
Tamil Nadu Minerals Limited,
31, Kamarajar Salai,
Chepauk, Chennai-600 005.

+1cc to Mrs.Srijayanthi, Advocate, S.R.No. 21647

+5cc to Mrs.A.L.Ganthimathi, Advocate, S.R.No.21173,21175

+1cc to the Government Pleader, S.R.No.21715

W.P.Nos.24169, 29334, 29342,
29387 & 29394 of 2018

JP-II(CO)
CT 27/05/2022