



WP(MD)Nos.14380 and 14381 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.07.2022

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THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) Nos.14380 and 14381 of 2022

&

W.M.P.(MD)Nos.10277 and 10283 of 2022

Virudhunagar District Quarry Owners

Welfare Association (Regn.No.57/2014),

Rep. by its Secretary,

A.Narayana Perumalsamy,

S/o.Ayyasamy,

D1/76, New Housing Unit,

Sivakasi West,

Virudhunagar District.

.. Petitioner in W.P.(MD)No.14380 of 2022

Ramar, S/o.Raju

.. Petitioner in W.P.(MD)No.14381 of 2022

Versus

1.The Commissioner/Additional Chief Secretary,
Commercial Tax Department,
Ezhilagam,
Chepauk,
Chennai.

2.The State Tax Officer/Joint Commissioner,
Reserve Line,
Palayamkottai,
Tirunelveli.

.. Respondent in both the W.Ps.

Prayer in W.P.(MD)No.14380 of 2022.:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to restrain the respondents from insisting the members of petitioner Association to register under the GST Act 2017.



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Prayer in W.P.(MD)No.14381 of 2022.:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to restrain the respondents from insisting the petitioner to register under the GST Act 2017.

For Petitioner : Mr.Sricharan Rangarajan
in both the W.Ps. for Mr.C.Jeganathan

For Respondents : Mr.S.Kameswaran
in both the W.Ps. Government Advocate

COMMON ORDER

The petitioners have filed these Writ Petitions seeking to restrain the respondents from insisting the petitioners to register under the GST Act 2017.

2.Since the issue involved in both the Writ Petitions are one and the same, they are heard together and disposed of by this common order.

3.The petitioner in W.P.(MD)No.14381 of 2022 sent a representation to the respondents stating that the officials from the State Tax Department visited various quarries and insisted the quarry owners to produce accounts book and other documents pertaining to their business. Further, they also sought for Transit Pass to ascertain as to whether any quarry materials transported. At that time, the petitioners informed them that they are paying royalty/seignorage charges. Further, the seignorage charge is in the nature of privilege tax and tax on tax cannot be again levied. Hence, no GST levied on seignorage charges. Despite the same, the officials went on to insist the



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petitioners to produce all the documents. Added to it, the learned counsel for the petitioners produced a copy of the judgment of the Hon'ble Apex Court in **W.P.(Civil)No.1076 of 2021, dated 04.10.2021 [M/s.Lakhwinder Singh vs. Union of India and others]**, wherein, the Hon'ble Apex Court ordered that until further orders, payment of GST for grant of mining lease/royalty by the petitioners therein shall remain stayed. The issue herein is also for the similar mineral. Hence, the authorities cannot conduct any survey or request for submission of documents and thereby, forced the petitioners to pay the proposed GST. Further, the learned counsel for the petitioners relied upon a decision of the Jharkhand High Court in **Mandhan Minerals Corporation and others vs. Union of India and others [W.P.(T)Nos.432 of 2021 etc. batch, dated 20.04.2022]** and also a decision of the Allahabad High Court in **A.D.Agro Foods Private Limited vs. Union of India [Writ Tax No.475 of 2021, dated 15.11.2021]**, wherein, the High Courts granted stay by following the judgment of the Hon'ble Apex Court with regard to this issue.

4.The learned Government Advocate appearing for the respondents submits that earlier, there were some doubts with regard to levy of GST on minerals. Therefore, a reference was sought. Thereafter, the Government of India, issued a Circular No.164/20/2021-GST, dated 06.10.2021, stating that representations have been received requesting for clarification as to the rate of



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GST applicable on supply of services by way of granting mineral exploration and mining rights during the period from 01.07.2017 to 31.12.2018. With effect from 01.01.2019, the rate schedule has been specifically amended and it is undisputed that since then such service attracts GST at the rate of 18%. Further, it was clarified that the expression "same rate of tax as applicable on supply of like goods involving transfer of title in goods", applies in case of leasing or renting of goods. In case of grant of mining rights, there is no leasing or renting of goods. Hence, the said entry does not extend to grant of mining rights, which is an entirely different activity. Based on the said clarification, the mineral quarry owners have been questioned and no GST have been demanded or collected with regard to minerals. The Department is also aware about the stay order of the Hon'ble Apex Court. The petitioners seek only Mandamus and the same would be considered and appropriate decision would be taken depending upon the outcome of the Hon'ble Apex Court.

5.Considering the above said submissions, this Court directs the respondents to consider the petitioners' representations dated 13.06.2022 and 24.06.2022 respectively, and dispose of the same in accordance with law, by following the judgment of the Hon'ble Apex Court [cited supra].



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6. Accordingly, these Writ Petitions are disposed of. No costs.

Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No

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To

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M.NIRMAL KUMAR, J.

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Common order in
Writ Petition (MD) Nos.14380 and 14381 of 2022

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