BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.20947 of 2022
and
W.M.P.(MD).No.15191 of 2022

S.Saravanan ... Petitioner

Vs.

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

2.The State Tax Officer,
Melur Assessment Circle,
Madurai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned notice issued by the second respondent dated 23.05.2022 and quash the same.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.S.Kameswaran
Government Advocate

ORDER

This writ petition has been filed to quash the impugned notice issued by the second respondent dated 23.05.2022.

2.Mr.S.Kameswaran, learned Government Advocate takes notice for the respondents. By consent, this writ petition is taken up for final disposal at the admission stage itself.

3.The learned counsel appearing for the petitioner submitted that the petitioner participated in the tender process called by the District Collector under the Tamil Nadu Minor and Mineral Concession Rules for grant of lease for carrying out quarry operations of rough stone for a period of five years for Government Porampoke land in Survey No.21/1 to an extent of 2.72.0 Hectare situated at Katchirayanpatti Village, Melur Taluk, Madurai District. The petitioner was declared as successful bidder and lease was granted by the District Collector vide his proceedings in Na.Ka.No.71/2018 dated 11.09.2018 for a period of five years and transport permits issued by the authorities for collecting the necessary statutory charges and other charges. Now the respondents are insisting and compelling the petitioner to register the quarry operations under the GST Act, 2017 and to pay the GST on the seigniorage fee paid by the petitioner to the Geology and Mining department. He further submitted that the said Act of levying GST has already been challenged before the Honourable Apex Court in ***W.P(Civil) No.1076 of 2021*** in the case of ***M/S.Lakh Winder Singh Vs. Union of India, dated 04.10.2021*** as well as before various other high Courts. The issue with regard to the royalty collected for the transport of minerals has been considered as tax or profit pentra, is pending before the Honourable 9 Judges Constitution Bench of the Honourable Supreme Court. Further, the Honourable Apex Court has granted stay for payment of GST for grant of mining lease/royalty by the petitioner, which has been followed by the various Courts including this Court. This being so, the issuance of the impugned notice is improper. Hence, the present petition has been filed.

4.The learned Government Advocate appearing for the respondents submitted that the petitioner was given right to use this minerals including its extraction and exploration upon payment of certain charges to the Government in the name of Seigniorage charges. It is a kind of royalty that is paid to the Government for removal for consumption of the minerals for the service received. According to Section 7 of the SGST Act, 2017, the petitioner's business would include supply. Hence, the supply of services in terms of permitting to quarrying and exploring of minerals such as sand, gravel and stones etc, for which seigniorage charges collected will be treated as supply, as it is the right given in return of consideration in the form of charges collected. According to entry Number 5 of notification number 13/17 Central Tax (rate), dated 28.06.2017, on the services supplied by the Central Government or any other authorities, GST shall be paid by the business entity as a service recipient under reverse charge mechanism under Section 9(3) of the GST Act 2017. Hence, notice has been send and the petitioner had received the notice on 23.05.2022 and he has not filed any reply to the notice and failed to attend personal hearing. Thereafter, to assess the petitioner under Section 63 (assessment of Unregistered Person) of the Act. Thereafter, entry number 12 of the impugned order clearly mentioned that the petitioner has been called for giving his objections within 15 days from the date of receipt of the notice and thereafter, failing which assessment will be made under Best of Judgment under Section 62 of the GST Act, 2017. Hence, it is only a notice. It is for the petitioner to file his objections along with supporting documents and citations referred by the petitioner. Thereafter, the State Tax Officer to consider and pass appropriate orders.

5.Considering the materials and perusal of the materials available on records, it is seen that the Honourable Apex Court in the case of ***M/S.Lakhwinder Singh Vs. Union of India and others***, had granted stay for payment of GST for grant of mining lease/royalty by the petitioner. Further, it has been followed consistently by various Courts including this Court. It is further seen that the impugned order is only a notice. The petitioner is directed to appear before the respondents and make his objections with necessary documents. The petitioner is directed to approach the second respondent within a period of 30 days from the date of receipt of a copy of this order and make his objections. Further , the second respondent is directed to consider the petitioner's objections and dispose the same in accordance with law following the judgment of the Hon'ble Apex Court (cited Supra). Till such time, **Status quo** to be maintained by the respondents.

6.With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

02.09.2022

Index : Yes / No
Internet : Yes/ No
vsg

To

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Chepauk,
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2.The State Tax Officer,
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M.NIRMAL KUMAR, J.

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