BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2022

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.24857 of 2022
and
W.M.P.(MD).No.18949 of 2022

K.Jeganathan ... Petitioner

Vs.

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

2.Proper Officer,
O/o. The Assistant Commissioner (ST),
Theni – 1 Assistant Circle,
Theni. ...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 2nd Respondent dated 12.09.2022 and quash the same as illegal and unconstitutional.

For Petitioner	:	Mr.C.Jeganathan
For Respondents	:	Mr.M.Prakash, Additional Government Pleader.

ORDER

This writ petition is filed against the impugned notice issued by the 2nd respondent dated 12.09.2022.

2.The petitioner is running a quarry after duly obtaining necessary licence/permit as per Tamil Nadu Minor and Mineral Concession Rules 1959, for five years from District Collector, vide proceedings in R.C.No. 1203/Mines/2018 dated 25.09.2020.

3.The learned counsel for the petitioner submits that the petitioner is compelled by the respondents to register its quarry operations under the GST Act, 2017 and is instructed to pay the GST on Seigniorage Fee paid to the Geology and Mining Department. It is submitted that Seigniorage Fee is itself a tax on quarried minor mineral and hence the levy of GST is unsustainable. Further, the said issue of legality of levy of GST on Seigniorage Fee is pending consideration before the Hon'ble Apex Court in ***W.P.(Civil).No.1076 of 2021*** in the case of ***M/s Lakhwinder Singh Vs Union of India*** dated ***04.10.2021***.

4. The Hon'ble Apex Court has granted stay of payment of GST for grant of mining lease/royalty by the petitioner, which has been followed by various

Courts. It was submitted that the respondents are demanding tax on Seigniorage Fee and also on minerals quarried and disposed. It was further submitted that levy and collection of tax/sales tax on minerals is not permissible as per judgment of the Hon'ble Apex Court in the case of ***India Cement Ltd. and others Vs State of Tamil Nadu and others*** reported in ***1990 (1) SCC 12.*** The issue as to the true nature of royalty/dead rent payable on minerals/ produced/mined/extracted is submitted to be referred by the Hon'ble Apex Court for consideration to a larger bench consisting of 9 Judges in the case of ***Mineral Area Development Authority etc., Vs. M/s.Steel Authority of India & others*** reported in ***2011 (4) SCC 450,*** wherein, the Hon'ble Supreme Court was pleased to place the matter on the administrative side before the Chief Justice for appropriate orders.

5. Mr.M.Prakash, learned Additional Government Pleader, takes notice for the respondents and submitted that this is only a notice and thus the Writ petition is premature and liable to be dismissed.

6. Considering materials available on records, it is seen that the Hon'ble 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 is seen that the impugned proceedings is only a

notice. The petitioner shall submit his objections to the notice within a period of 30 days from the date of receipt of a copy of this order. It is open to the petitioner to place reliance upon the judgement in the case of ***M/S.Lakhwinder Singh Vs. Union of India and others,*** and any other judgments which the petitioner intends to. If any such objection is filed, the 2nd Respondent shall consider the same and pass appropriate orders. Until the disposal of the objections, the Respondents shall not resort to recovery proceedings. It is made clear that this Court has not expressed any views with regard to the merits and it is open to the Respondents to consider the issue raised on its own merits.

7. With the above direction, this writ petition is disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

02.11.2022

Index : Yes / No
Internet : Yes/ No
Lm

To
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Chepauk,
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2.Proper Officer,
O/o. The Assistant Commissioner (ST),
Theni – 1 Assistant Circle,
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MOHAMMED SHAFFIQ, J.

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