BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2022

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 28411 of 2022
and
W.M.P. (MD) No. 22434 of 2022

T.Ariyamalai ... Petitioner

Vs.

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

2. State Tax Officer,
   O/o.The Assistant Commissioner, (ST),
   Theni 2. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned notice issued by the Second Respondent dated 09.09.2022 and quash the same as illegal and unconstitutional .

For Petitioner	:	Mr. C.Jeganathan
For Respondents	:	Mr. N.Ga.Natraj Government Advocate

ORDER

Heard Mr. C.Jeganathan, Learned Counsel for the Petitioner and Mr. Na.Ga.Nataraj, Learned Government Advocate, who takes notice for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner has been granted the right to use minerals including its extraction and exploration upon payment of seigniorage charges by the Government of Tamil Nadu. The Second Respondent by notices dated 09.09.2022 has called upon the Petitioner to file his objections for payment of tax under reverse charge mechanism under Section 9(3) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act' for short), on the seigniorage charges paid and on the method of forward charges under Section 9(1) of the Act on the material disposed within 15 days from the date of its receipt, failing which assessment would be made following the prescribed procedure for best of judgment for the tax period 2020-2021 under Section 63 of the Act.

3. The primordial attack of the Petitioner on the impugned notices is that matters relating to the question as to whether 'service tax' under Section 65(105)(zzzz) of the Finance Act, 1994, on renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce is within the legislative competence of the Union Parliament, would have to await the outcome of the reference made to a Nine Judges Bench of the Hon'ble Supreme Court of India in ***Mineral Area Development Authority -vs- M/s. Steel Authority of India*** (Order dated 30.03.2011 in Civil Appeal Nos. 4056-4064 of 1999) and that in ***M/s. Lakhwinder Singh -vs- Union of India*** (Order dated 04.10.2021 in Writ Petition (Civil) No. 1076 of 2021), payment of Goods and Services Tax for grant of mining lease/royalty for the Petitioner therein has been stayed until further orders. However, it has come to light that the Hon'ble Supreme Court of India has subsequently in ***M/s. Lakhwinder Singh -vs- Union of India*** (Order dated 04.01.2022 in Writ Petition (Civil) No. 1076 of 2021) dismissed that Writ Petition, meaning thereby that the earlier interim order granted to the Petitioner therein has been vacated. Further, the tagged cases in Civil Appeal Nos. 4056-4064 of 1999 have been listed for hearing before the Two Judges Bench of the Hon'ble Supreme Court of India on 28.11.2019,

20.02.2020, 16.10.2020, 12.04.2021, 30.03.2022, 28.04.2022, 04.08.2022, 12.08.2022, 26.08.2022, 30.09.2022 and 18.11.2022 and some of the parties therein have been directed to comply with Section 127(8) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. In such circumstances, the question of restraining the Second Respondent from proceeding in furtherance to the impugned notices does not arise.

4. At this juncture, it must be recapitulated that it has been consistently held as reiterated by the Hon'ble Supreme Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12 SCC 28] that a charge memo or show cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which read as follows:-

> *"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide* ***Executive Engineer, Bihar State Housing Board -vs- Ramdesh Kumar Singh*** *[JT 1995 (8) SC 331],* ***Special Director -vs- Mohd. Ghulam Ghouse*** *(AIR 2004 SC 1467),*

***Ulagappa -vs- Divisional Commissioner, Mysore** [2001(10) SCC 639[, **State of U.P. -vs- Brahm Datt Sharma** (AIR 1987 SC 943) etc.*

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or *otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.*

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in this Writ Petition in the reply to be submitted to the Second Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for the Court to interfere at this pre-mature stage of the matter.

5. In such circumstances, without expressing any view on the merits of the controversy involved in the matter, the Writ Petition is disposed on the following terms:-

(i) it shall be incumbent upon the Petitioner to submit her explanation to the show cause notices, which are impugned in the Writ Petition, if not done already, to the concerned authority by 28.02.2023;

(ii) in the event of not being satisfied with the explanation submitted by the Petitioner, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioner to explain her position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment;

(iii) if any adverse decision is taken, the Petitioner may pursue legal remedies in accordance with law;

(iv) consequently, the connected Miscellaneous Petition is closed; and

(v) there shall be no order as to costs.

19.12.2022

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Index : Yes/No

Note: (i) Issue order copy by 23.01.2023.

(ii) Registry is directed to return the original copy of the impugned order under written acknowledgment after retaining a copy of the same for record.

To

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

2. State Tax Officer,
   O/o.The Assistant Commissioner, (ST),
   Theni 2.

Copy to

T.Ariyamalai
W/o. S.Tharmaraj
Pappammalpuram
Thimmarasanarakkanur Village,
Andipatty,
Theni District.

P.D.AUDIKESAVALU,J.

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