IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.03.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.5273, 5276, 5279, 5282 & 5287 of 2024
and W.M.P.Nos.5788, 5789, 5805, 5806,
5793, 5796, 5800, 5801, 5808, 5809 of 2024

M/s.Zak Exports,
Represented by its Partner,
Sri. Mir Mazahar Ali,
No.35/13, Co-operative colony,
Krishnagiri-635 001. ... Petitioner in all WPs.

-vs-

The State Tax Officer,
Intelligence, O/o.The Joint Commissioner (ST),
Salem. ... Respondent in W.P.No.5273 of 2024

The Deputy State Tax Officer,
Adjudication & Legal,
O/o Joint Commissioner (State Taxes),
Intelligence Division,
Agraharam Village, Hosur. ... Respondent in W.P.Nos.5276, 5279, 5282 & 5287 of 2024

Prayer in W.P.No.5273 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in Ref.No.33AABFZ4999G1ZP/2017-2018 (FORM GST DRC-07) and quash the proceedings dated 30.11.2023 passed therein in so far as levy of GST on seignior-age fee, GST under RCM on quarry lease expenses and GST under RCM on DMF.

Prayer in W.P.No.5276 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in Ref.No.33AABFZ4999G1ZP/2018-2019 (FORM GST DRC-07) and quash the proceedings dated 22.01.2024 passed therein in so far as levy of GST on seignior-age fee, GST under RCM on quarry lease expenses and GST under RCM on DMF.

Prayer in W.P.No.5279 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in Ref.No.33AABFZ4999G1ZP/2020-2021 (FORM GST DRC-07) and quash the proceedings dated 27.01.2024 passed therein in so far as levy of GST on seignior-age fee, GST under RCM on quarry lease expenses and GST under RCM on DMF.

Prayer in W.P.No.5282 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in Ref.No.33AABFZ4999G1ZP/2021-2022 (FORM GST DRC-07) and quash the proceedings dated 22.01.2024 passed therein in so far as levy of GST on seignior-age fee, GST under RCM on quarry lease expenses and GST under RCM on DMF.

Prayer in W.P.No.5287 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in Ref.No.33AABFZ4999G1ZP/2019-2020 (FORM GST DRC-07) and quash the proceedings dated 22.01.2024 passed therein in so far as levy of GST on seignior-age fee, GST under RCM on quarry lease expenses and GST under RCM on DMF.

In all WPs.

For Petitioners : Mr.B.Raveendran

For Respondents : Mr.T.N.C.Kaushik,
Additional Government Pleader (T)

COMMON ORDER

In all these writ petitions, the petitioner challenges assessment orders relating to payment of interest and penalty in so far as such assessment orders relate to imposition of GST on reverse charge mechanism on seigniorage fee, lease charges and payments made to the District Mineral Fund (DMF).

2. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice on behalf of the respondents. He has placed on record the recent judgment of the Division Bench of this Court in a batch of writ petitions, *A.Venkatachalam v. Assistant Commissioner (ST), Palladam II Assessment Circle, Palladam, W.P.Nos.30974 of 2022 batch*. In the said judgment, the following directions were issued at paragraph 9 thereof:

"*9. In these circumstances, we deem it fit and appropriate to issue the following directions:*

(i) In the cases, where the challenge is made to the show cause notices, the writ petitioners shall submit their objections / representations within a period of four weeks from the date of receipt of a copy of this order.

(ii) Upon receipt of the objections / representations from the wrt

petitioners, the authority concerned shall proceed with the adjudication, on merits and in accordance with law, after affording reasonable opportunity of being heard to the petitioners. However, the orders of adjudication shall be kept in abeyance until the Nine Judge Constitution Bench decides the issue as to the nature of royalty.

(iii) It is made clear that there shall be no recovery of GST on royalty until the Nine Judge Constitution Bench takes a decision.

(iv) Needless to state that on the matters being decided, the writ petitioners if still aggrieved, shall redress their grievance(s), if any, before the appropriate forum, including by filing appeal(s).

(v) Insofar as the challenge to the notification as well as the circular, it is open to the writ petitioners to act upon, after the outcome of the case pending before the Nine Judge Constitution Bench.

(vi) It is also made clear that all the contentions are left open for the writ petitioners to raise in appropriate proceedings, after the outcome of the decision of the Nine Judge Constitution Bench."

3. In view of the above judgment, these petitions are liable to be

disposed of on the same terms in so far as the impugned assessment orders pertain to the imposition of interest and penalty on seigniorage fee, lease charges and DMF payments. In respect of all other aspects, the impugned assessment orders are not interfered with. Accordingly, W.P.Nos.5273, 5276, 5279, 5282 & 5287 of 2024 are disposed of in terms of directions issued in paragraph 9 of *A.Venkatachalam v. Assistant Commissioner*. No costs. Consequently, connected miscellaneous petitions are closed.

01.03.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
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To

1. The State Tax Officer,
Intelligence, O/o.The Joint Commissioner (ST),
Salem.

2.The Deputy State Tax Officer,
Adjudication & Legal,
O/o Joint Commissioner (State Taxes),

Intelligence Division,
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SENTHILKUMAR RAMAMOORTHY,J.

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