IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.7913 of 2024
and W.M.P.No.8889 of 2024

M/s.Sumukha Blue Metals & M.Sand
Rep. by Proprietor V.Nagaraja
Athimugam Village,
Shoolagiri Taluk,
Krishnagiri District. ... Petitioner

-vs-

The Deputy State Tax Officer,
Intelligence, Hosur Division,
Office of the Joint Commissioner (ST) (Intelligence),
3/47, Sapthagiri Complex, Commercial Taxes Building,
2nd Floor, Gandhi Nagar, Near Five Star Petrol Bunk,
Hosur - 635 109. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records relating to the impugned notice of the respondent in GSTIN:

33ACYPV3693E2ZV, dated 22.01.2024 for levy of GST on the lease amount for grant of mining lease, quash the same.

For Petitioner : Mr.V.Sanjeevi

For Respondent : Mr.V.Prashanth Kiran, GA (T)

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ORDER

By this writ petition, the petitioner assails the intimation issued under the Tamil Nadu Goods and Services Tax Act, 2017 in relation to the imposition of GST under the reverse charge mechanism on the mining lease amount paid by the petitioner to the Government.

2. Learned counsel for the petitioner relies on Notification No.13/2017 - Central Tax (Rate) insofar as the claim relates to GST on mining lease and points out that services supplied by the Central, State Government or local authority to a business entity by way of

renting of immovable property is excluded from GST. Reliance is also placed on interim orders issued by the Hon'ble Supreme Court in a batch of cases, including SLP(C) No.37326 of 2017. The Supreme Court has granted an interim stay not only in respect of royalty but also in respect of mining lease. It is stated that the nine judge bench has heard the batch of cases.

3. Learned counsel further placed for consideration the Division Bench Judgment in a batch of cases where the lead case is *A.Venkatachalam v. Assistant Commissioner (ST), Palladam, in W.P.No.30974 of 2022*.

4. The Division Bench of this Court issued the following directions at paragraph 9 of the judgment:

"*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 writ 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."

5. In view of the said judgment, this petition is liable to be

disposed of on the same terms. Consequently, the petitioner is permitted to submit his reply to the intimation within a maximum period of ***four weeks*** from the date of receipt of a copy of this order.

6. W.P.No.7913 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.No.8889 of 2024 is closed.

26.03.2024

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

To

The Deputy State Tax Officer,
Intelligence, Hosur Division,
Office of the Joint Commissioner (ST) (Intelligence),
3/47, Sapthagiri Complex, Commercial Taxes Building,
2nd Floor, Gandhi Nagar, Near Five Star Petrol Bunk,
Hosur - 635 109.

SENTHILKUMAR RAMAMOORTHY,J

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