IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.11640 & 11644 of 2024 and
W.M.P.Nos.12731 & 12736 of 2024

Tvl. P.Sudha ... Petitioner in both WPs.

-vs-

The Deputy State Tax Officer,
Intelligence, Hosur Division,
Hosur. ... Respondent in both WPs.

PRAYER in W.P.No.11640 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the respondent in proceedings dated 19.01.2024 issued under Section 9(3) & 9(1) of the GST Act 2017 and quash the same.

PRAYER in W.P.No.11644 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the respondent in proceedings dated 24.01.2024 issued in Form GST DRC-01A to the petitioner under Section 74(5) read with Section 9(3) and 9(1) of the GST Act 2017 in respect of assessment years 2018-2019 to 2023-2024 and quash the same.

In both WPs.

For Petitioner : Mr.K.S.Viswanathan, Senior Counsel for Mr.G.M.Ananthakumar

For Respondent : Mr.C.Harsha Raj, AGP (T)

COMMON ORDER

In these writ petitions, the petitioner has assailed the intimation communicating the GST liability under applicable GST laws in respect of both seigniorage fee and mining lease amounts 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 to contend that 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 is scheduled to hear 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, these petitions are liable to be disposed of on the same terms insofar as it relates to either the issue of seigniorage fee or mining lease. Consequently, the petitioner is permitted to submit her 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.Nos.11640 & 11644 of 2024 are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

03.06.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
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SENTHILKUMAR RAMAMOORTHY,J

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To

The Deputy State Tax Officer,
Intelligence, Hosur Division,
Hosur.

W.P.Nos.11640 & 11644 of 2024 and
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