WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)Nos.22318 and 22319 of 2022
and
W.M.P.(MD)Nos.16506, 16507, 16508 & 16509 of 2022

M/s.Concretia Rock Products Private Limited,
Represented by its Managing Director,
Mr.Rajesh,
Katchaikatti Road,
Vadipatti Taluk,
Madurai - 625 218. ... Petitioner in both the W.Ps.

Vs.

State Tax Officer,
Madurai Rural (West),
Assessment Circle Madurai,
Commercial Taxes Building,
Dr.S.V.K.S.Thangaraj Salai,
Madurai - 625 021. ... Respondent in both the W.Ps.

Prayer in W.P.(MD)No.22318 of 2022: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in the impugned notice dated 12.08.2022 issued under Section 63 of the TNGST Act, 2017, quash the same as illegal and not in accordance with law and consequently, direct the respondent not to proceed with assessing the petitioner's files for the assessment period 2017 to 2022 inasmuch as it relates to the payment of taxes on seigniorage charges.

WEB COPY

Prayer in W.P.(MD)No.22319 of 2022: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in the impugned notice dated 12.08.2022 issued under Section 63 of the TNGST Act, 2017, quash the same as illegal and not in accordance with law and consequently, direct the respondent not to proceed with assessing the petitioner's files for the assessment period 2014 to 2019 inasmuch as it relates to the payment of taxes on seigniorage charges.

For Petitioner in both the W.Ps. : Mr.R.Sivaraman

For Respondent in both the W.Ps.: Mr.N.Dilipkumar
Senior Standing Counsel

COMMON ORDER

By this common order, both the Writ Petitions are being disposed of.

2. In these Writ Petitions, the petitioner has challenged the impugned notices issued seeking to demand GST on the royalty payable by the petitioner to the Government for mining of minerals.

3. The learned counsel for the petitioner would submit that the issue is now *sub judice* before the Hon'ble Supreme Court in **Writ Petition (Civil) No.1076 of 2021** [M/s.Lakhwinder Singh vs. Union of India and others].

https://www.mhc.tn.gov.in/judis

WEB COPY

4. The learned counsel for the petitioner would rely on the recent development before the Hon'ble Supreme Court, which seems to indicate that the case was heard on 07.03.2024 and orders are awaited. Therefore, the learned counsel for the petitioner would submit that pending further orders of the Hon'ble Supreme Court, the present cases may be deferred by granting interim relief to the petitioner.

5. On the other hand, the learned Senior Standing Counsel for the respondent would rely on the decision of the Division Bench of this Court rendered in **Tvl.A.Venkatachalam** vs. **The Assistant Commissioner (ST), Palladam II Assessment Circle, Palladam** [W.P.No.30974 of 2022 etc. batch, dated 08.01.2024], wherein the Division Bench of this Court, taking note of the questions framed by Constitution Bench of the Hon'ble Supreme Court, has held as under:-

> *"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*

WEB COPY

> *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."*

6. It is submitted that even otherwise the present Writ Petitions are premature and are liable to be dismissed, as the petitioner has not even replied to the impugned notice.

7. Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent and having considered the order passed by the Division Bench

https://www.mhc.tn.gov.in/judis

WEB COPY

of this Court in **Tvl.A.Venkatachalam's case** referred to supra, I am inclined to dispose of these Writ Petitions by following the directions contained in Paragraph No.9 of the order of the Division Bench of this Court. Incidentally, this order was followed under similar circumstances, in the case of an assessee where assessment was also completed, which was a subject matter of challenge in W.P.No.30031 of 2023, vide order dated 04.06.2024.

8. In view of the above observation, the petitioner is directed to file a reply/objection within a period of four weeks from the date of receipt of a copy of this order. The respondent shall thereafter adjudicate the case on merits, but however, shall keep the implementation of the order in abeyance pending further orders from the Hon'ble Supreme Court as ordered by the Division Bench of this Court.

9. These Writ Petitions stand disposed of with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/ No **12.06.2024**
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

https://www.mhc.tn.gov.in/judis

WEB COPY

To

The State Tax Officer,
Madurai Rural (West),
Assessment Circle Madurai,
Commercial Taxes Building,
Dr.S.V.K.S.Thangaraj Salai,
Madurai - 625 021.

https://www.mhc.tn.gov.in/judis

WEB COPY

C.SARAVANAN, J.

smn2

Common order in
W.P.(MD) Nos.22318 and 22319 of 2022

12.06.2024

https://www.mhc.tn.gov.in/judis