BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.12.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) Nos.22266 to 22269 of 2024
and
W.M.P.(MD) Nos.18821 to 18828 of 2024

M/S.Sree Vinayagar Transports,
rep by its Prop Ramar
... Petitioner in all W.Ps.,

/vs./

The Deputy State Tax Officer-2,
Virudhunagar II Circle,
Virudhunagar.
... Respondent in all W.Ps.,

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the Respondent in GSTIN.33BJHPR2506R1ZS/2018-19, 2019-20, 2020-21 and 2021-22 dated 08.01.2024 and 09.01.2024 and quash the same as illegal, arbitrary without jurisdiction and against the principles of natural justice.

For Petitioner
in all W.Ps., : Mr.A.Chandra Sekaran

For Respondent
in all W.Ps., : Mr.J.K.Jeyaseelan
Government Advocate

COMMON ORDER

The challenge in these writ petitions is to the orders of assessment made under Section 74 of the GST Act, 2017 by holding that the petitioner had suppressed in his returns filed for the respective assessment years certain vital factors.

2. The learned counsel for the petitioner would submit that the petitioner had obtained mining license from the appropriate competent authority and had been carrying mining operations by excavation of stones and supplying the same to its customers.

3. The Hon'ble Apex Court in the case of ***India Cement Limited and others Vs. State of Tamil Nadu and others*** reported in ***(1990) 1 Supreme Court Cases 12*** had held that the tax cannot be levied on royalty, as the royalty itself is in the nature of tax. However, in a contra view in *Kesoram Industries' case*, the Hon'ble Apex Court had held that the royalty is amenable to tax. Since there are

two contra views on the very same subject, a larger Bench was formed and the issue was decided in ***Mineral Area Development Authority and others Vs. Steel Authority of India and others*** reported in ***2024 INSC 554***.

4. The larger Bench of the Hon'ble Apex Court had held that the royalty is taxable. Hence, there was no suppression on the part of the petitioner for the respondents to initiate proceedings under Section 74 of the GST Act, 2017. The petitioner had made the tax demanded and the petitioner is not liable for the payment of interest and penalty, as the petitioner had not wilfully suppressed any material facts. Only in view of the change of law by the Hon'ble Apex Court, the liability of the petitioner to pay the tax on royalty had arisen and therefore, the petitioner cannot be penalized.

5. Countering his arguments, Mr.J.K.Jeyaseelan, learned Government Advocate appearing on behalf of the respondent would submit that in spite of notice to the petitioner, the petitioner had not submitted any reply nor had been appeared before the authority and the present writ petition had been filed only with a view to delay the recovery action under the statute. He would further

submit that the petitioner has an alternative remedy of approaching the appellate authority under Section 107(1) of the TNGST Act, 2017.

6. It is an admitted case of the petitioner that the petitioner had paid royalty to the Department of Geology and Mining in order to avail the mining lands, as the same is taxable as per the notification issued by the Central Government. He would also acknowledge the payment of tax liability by the petitioner and would submit that, that itself is a reason, which can be held against the petitioner that he had suppressed the payment on royalty to the Government, for which the same is taxable. Hence, he would submit that the writ petition is without any merits and the petitioner should be directed to file an appeal before the appellate authority.

7. I have considered the rival submissions made by the learned counsel on either side.

8. It is an admitted case that the payment of tax on royalty came to be settled by a larger Bench of the Hon'ble Supreme Court in ***Mineral Area Development Authority and others Vs. Steel Authority of India and others***

reported in ***2024 INSC 554***. Only thereafter, the petitioner becomes liable to pay tax on the royalty paid by him. This cannot be termed as suppression of material facts while filing the returns for invoking the provisions of Section 74 of the GST Act, 2017. However, in view of the judgment, the petitioner is liable to pay the tax, but at the same time, the Revenue is also entitled to collect interest on the delayed payment, as the petitioner had gained by non payment of tax, but however the petitioner cannot be mulct with the penal charges as the same is not based upon suppression of any material facts. Hence, the order of assessment is upheld only in respect of the tax and the interest component and the imposition of penalty are set aside.

9. In fine, the Writ Petitions stand partly allowed and the component of penalty alone imposed against the petitioner is set aside. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

19.12.2024

Index : Yes / No
Internet : Yes / No
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To

The Deputy State Tax Officer-2,
Virudhunagar II Circle,
Virudhunagar.

K.KUMARESH BABU, J.

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