IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.43335 of 2025
and
W.M.P.Nos.48513 & 48514 of 2025

Tvl. Samukha Blue Metal and M Sand,
Rep. by its Proprietor V. Nagaraj,
S.F. No.2/3, 4/3, 5/1, 5/2, Athirmugam Village ,
Shoolagiri Taluk, Krishnagiri - 635 105. ... Petitioner

Vs.

1. The Deputy State Tax Officer,
   Adjudication and Legal Wing,
   Hosur – 635130.

2. The Assistant Commissioner (ST)
   Hosur (North)-I
   Hosur- 635109. ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for 1st Respondent's Order dated 29.01.2024 with Ref. No. ZD330124138993E and 2nd Respondent's consequential "Urgent notice" dated 26.08.2025 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mrs.K.Vasanthamala
Government Advocate

ORDER

Mrs.K.Vasanthamala, learned Government Advocate, takes notice for the respondents.

2. With the consent of the learned counsel for the petitioner and learned Government Advocate for the respondents, this Writ Petition is being disposed of at the time of admission.

3. The petitioner is before this Court against the impugned Order dated 29.01.2024 in DRC-07 passed by the 1st respondent under Section 74 of the respective GST enactments for the tax period 2021-2022 and the consequential recovery notice issued by the 2nd respondent. By the impugned order, the demand proposed in the Show Cause Notice in DRC-01 dated 28.07.2023 has been confirmed.

4. The facts on record reveal that the petitioner replied to the Show Cause Notice in DRC-01 dated 28.07.2023 and also attended the personal

hearing before the respondents, which further culminated in the impugned Order in DRC-07 dated 29.01.2024. The present writ petition was filed only on 09.10.2025.

5. The learned counsel for the petitioner would submit that after the DRC-01 notice dated 28.07.2023, an intimation in DRC-01A was issued on 22.01.2024 to the petitioner by the office of the 2nd respondent, calling upon the petitioner to pay a sum of Rs.1,04,76,000/-. This Notice dated 22.01.2024 was successfully challenged by the petitioner before this Court in W.P.No.7913 of 2024.

6. This Court, following the decision of the Division Bench in **W.P.No.30974 of 2022 batch** dated **08.01.2024**, disposed of the Writ Petition in W.P.No.7913 of 2024 vide Order dated 26.03.2024 by directing the petitioner to file a reply to the intimation in DRC-01A dated 22.01.2024. Meanwhile, the impugned order was passed on 29.01.2024.

7. Operative portion of the Order dated 26.03.2024 is extracted hereunder:

"*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."

8. The demand confirmed by the impugned Order dated 29.01.2024 passed for the tax period 2021-2022 is a composite demand as detailed below:

1. Payment of tax under RCM@ 18% for Seignorage fees paid for the Year 2021-22

The Taxable person has paid Rs.9, 20,400/- as Seignior age fees which attract 18% tax liability under Reverse Charge Mechanism.

Assessment Year	Permit issued qty (in cbm)	Seigniorage fees paid (Rs.)	Tax payable at the rate of 18 % (Rs.
2021-22	15,600	9,20,400	1,65,672

The taxable person has paid the tax due on Seignior age fees along with interest as mentioned in the above tabular column after intimation through FORM GST DRC -03 as follows.

Sl.No.	ARN No.	Date	Asst Year	CGST	SGST	TOTAL
1	AD3301230286341	18.01.2023	2021-22	82,836	82,836	1,65,672

Tax payable : Rs.1, 65,672/-
Paid : Rs.1, 65,672/-
Balance payable : R.Nil

The Tax payer paid the interest through FORM GST DRG -03 as follows.

Sl.No.	ARN No.	Date	Asst Year	CGST	SGST	TOTAL
1	AD3301230286341	18.01.2023	2021-22	15,517	15,517	31034

Penalty will be levied under section 74 of the TNGST/CGST Act, 17@ 100% as follows.
Penalty payable CGST Rs.82, 836, SGST Rs.82, 836.

In reply the taxpayer had stated that as they have paid the tax due and interest on 18-01-2023 i.e. before the issue of notice in DRC 01A on 10.07.2023 and requested to consider the levy of penalty As the taxpayer had paid the tax due of Rs. 1,65,672/- and interest of Rs.31,034/- on 18.01.2023 vide DRC 03 AD3301230286341. i.e. before the issue of notice in DRC 01A on 10.07.2023, 15% penalty is levied as per Section 74(5) of the TNGST Act 2017.

PENALTY		
IGST	CGST	SGST
0	12426-	12426-

35

RCM @18% for Lease amount of Rs. 5,82,00,000/- is Rs.1,04,76,000/- (SGST-5238000+CGST-5238000)

Penalty will be levied under section 74 of the GST Act, 2017 for non-payment of RCM due and interest for the belated payment under section 50 of the GST Act, 2017.

For the defect the tax payer reply is not accepted, hence the taxpayer is intimated to pay tax penalty along with Interest.

Turnover	Tax @ 18%		Interest		Penalty @ 18%	
	CGST	SGST	CGST	SGST	CGST	SGST
5,82,00,000	52,38,000	52,38,000	16,99,731	16,99,731	52,38,000	52,38,000

3. Details to be furnished by the taxpayer as follows:

The taxpayer is requested to furnish the Income tax return with notes and P&L trading account for turnover verification for the financial year 2021-22.The tax payer if failed to furnish the said documents for scrutiny the actual turnover of the taxable person could not be arrived. In view of the non-submission of above records relates to business accounts for the year 2021-22 it is propose to be assess the turnover on best of judgement basis for the year 2021-22 by adding 50% of equivalent amount to the turnover reported in the returns.

Further the tax payer's P&L trading account obtained from the GST portal. On verification of total turnover declared in GSTR-3B and P&L trading account it is noticed that the tax payer short turnover reported, for which short payment of tax as detailed below:

Financial Year	GSTR-3B	P&L trading account	Diffrence	CGST @9%	SGST @9%
2021-2022	16433800	25903700	9469900	852291	852291

Tax proposed CGST Rs. 852291/- SGST Rs. 852291/-

Penalty at 100% of the tax due under section 74 of the Act along with appropriate interest U/S 50 of the GST Act, 2017.

The taxpayer had replied that Tvl.Sumukha Blue Metal & M sand sold Fixed assesst sale - Machinery also they have submitted the Profit and Loss account and copy of the income tax return declared a turnover of Rs. 1,64,33,800/- same is duly declared and taxes discharged and GSTR- 9 for the financial year 2021-22 . The taxpayer had two unit with the same PAN Number Blue metal sale made in another unit (Tvl. S.V Blue Metal) the details are given below also GSTR -9 submitted for your kind perusal please consider my reply and drop this defect.

Particulars	Sumukha Blue Metal And M Sand	SV Blue Metal
A) GST Turnover Decleared in GSTR3B 2021-22	16433800	42556218
Income Tax Decleared in Turnover Details as below		
Blue Metals Sales	0	25903700
Fixed Assets - Machinery sales	16433800	16652518
B) P&L A/C 2021-22	16433800	42556218
Difference in GSTR-3B VS P&L A/C (A-B)	0	0

In this connection the tax payer had submitted the document for perusal which is carefully examined and verified the FY 2021-22 Profit and Loss Account and copy of the income tax return declared a turnover of Rs. 1,64,33,800/- and same is duly declared and taxes discharged. In this regards the copy of the GSTR 9 is also verified found Correct. Thus the Discrepancies pointed out is dropped.

4. RCM for Freight

The taxpayer is requested to furnish the P&L trading account for freight and verification for the financial year 2021-22.The tax payer if failed to furnish the said documents for scrutiny the actual freight paid of the taxable person could not be arrived. In view of the non-submission of above records 5% of the purchase turnover will be assumed as freight turnover and tax at 5% will be levied under RCM.

On verification of the P&L trading account filed by the taxpayer, it has been noticed that the taxpayer has incurred freight charges, for which tax RCM has not paid in GSTR-3B for the following years as detailed below:

Financial Year	Freight Charges declared in P&L trading account	RCM tax @ 2.5% SGST	RCM tax @ 2.5% SGST
2021-2022	167344	4183	4183

The tax payer had not submitted any proof for the Freight Charges on RCM declared in Profit and Loss account. Hence the taxpayer is intimated to pay tax penalty along with Interest.

Turnover	Tax @ 5%		Interest		Penalty @ 5%	
	CGST	SGST	CGST	SGST	CGST	SGST
167344	4183	4183	3549	3549	4183	4183

In view of the above circumstances, the Tax payer is assessed for the year 2020-21 under Section.74 of TNGST Act 2017 .

Tax and other dues: - [Tax Period from 01.04.2021 to 31.03.2022]

1	**Details of order**		
a	Order Number	:	33ACYPV3693E2ZV / 2021-22
b	order date	:	29.01.2024
c	Tax period	:	April - 21 to March -22
2	**Issues involved**	:	
	Classification	:	Nil
	Valuation	:	Nil
	Rate of tax	:	Nil
	Suppression of turnover	:	Rs.5,83,67,344/-
	ITC availed wrongly	:	Nil
	Excess refund released	:	Nil
	Place of supply	:	Interstate , Intra-state
	others specify:	:	Nil
3	**Description of Goods and Services**		

Sl No	HSN Code	Description
-	25171010	Blue Metal, M Sand

4 Details of Demand

Sl. No	Rate of Tax	Turnover (Rs.)	Place of supply of Name of State	Act	Tax (Rs.)	Interest (Rs.)	Penalty (Rs.)
1	2	3	4	5	6	7	8
1	9	5,82,00,000	Tamil Nadu	CGST	52,38,000	16,99,731	52,50,426
2	9			SGST	52,38,000	16,99,731	52,50,426
3	2.5	167344	Tamil Nadu	CGST	4,183	1,357	4,183
4	2.5			SGST	4,183	1,357	4,183
		TOTAL			1,04,84,366	34,02,176	1,05,09,218

ABSTRACT OF DUES

Details	IGST	CGST	SGST	Total
Tax	0	52,42,183	52,42,183	1,04,84,366
Interest	0	17,01,088	17,01,088	34,02,177
Penalty	0	52,54,609	52,54,609	1,05,09,218
Total	0	1,21,97,880	1,21,97,880	2,43,95,761

Please note that interest has been calculated up to 29.01.2024 of passing the order. While making payment, interest for the period between the date of order and the date of payment shall also be worked out and paid along with the dues stated in the order.

9. It is noticed that there is an overlap in the demand proposed in the Notice in DRC-01A dated 22.01.2024, which is the subject matter of

challenge in W.P.No.7913 of 2024, which came to be disposed vide Order dated 26.03.2024 and a part of the demand insofar as the lease rent paid by the petitioner is concerned.

10. The learned counsel for the petitioner fairly concedes that the levy of GST on the seigniorage fee has been paid voluntarily by the petitioner, but whereas the demand on the lease rent on account of lease of immovable property, the petitioner is not liable to pay GST.

11. In this connection, it is also submitted by the learned counsel for the petitioner that taxes should be paid only on a 'forward charge' basis in accordance with the provisions of the respective GST enactments, and further submitted that initiation of proceedings under Section 74 of the respective GST enactments is arbitrary and unreasonable.

12. At this stage, the learned Government Advocate for the respondents would submit that the entire amount of dispute tax i.e Rs.1,04,84,366/- has already been recovered from the petitioner in two installments on 29.08.2025 and 09.09.2025 (Rs.52,42,183/- each).

13. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

14. The petitioner’s submission that there was a confusion in the light of the order secured by the petitioner in **W.P.No.7913 of 2024** dated **26.03.2024** merits consideration.

15. Considering the fact that the entire amount of the disputed tax as confirmed vide impugned order has already been recovered from the petitioner, the petitioner is given liberty to work out the statutory appeal remedy, subject to the petitioner filing an appeal before the appellate authority within a period of 30 days from the date of receipt of a copy of this order.

16. Since the entire amount of disputed tax has already been recovered, no further pre-deposit is required to be made.

17. If the petitioner files an appeal against the impugned Order dated 29.01.2024 within the stipulated time, the appellate authority shall dispose of the appeal on merits and in accordance with law after hearing the petitioner

without reference to the aspect of limitation.

18. In case the petitioner fails to comply with the above stipulation, the respondents are at liberty to proceed against the petitioner in the manner known to law.

19. With these directions, this Writ Petition stands disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

11.11.2025

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Neutral Citation : Yes / No

To

1. The Deputy State Tax Officer,
   Adjudication and Legal Wing,
   Hosur – 635130.

2. The Assistant Commissioner (ST)
   Hosur (North)-I
   Hosur- 635109.

C.SARAVANAN, J.

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W.P.No.43335 of 2025

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