

Court No. - 3

Case :- WRIT TAX No. - 772 of 2022

Petitioner :- M/S Manu Tractors

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

Heard Sri Shubham Agrawal, learned counsel for the petitioner and the learned standing counsel for the State - respondents.

This writ petition has been filed praying for the following reliefs :

"i. Issue a writ, order or direction in the nature of Certiorari quashing the impugned orders dated 8.2.22, 21.4.22, 20.04.22, 17.1.22, and 17.1.22 for the period Feb-Mar20, Apr-Nov 20, Mar 21, June 21 and July 21 passed under Section 74(9) of the GST Act;

ii Issue a writ, order or direction in the nature of Certiorari quashing the purported clarification with respect to levy of GST on mining activity w.e.f. 01.07.2017 as contained in item H6 of the Press Release issued pursuant to the 45th meeting of the GST Council on 17.09.2021."

As per impugned order the petitioner has not paid G.S.T. on the amount of royalty. The petitioner denies his liability of G.S.T. on royalty.

In similar WRIT TAX No. - 270 of 2022 (M/S Silverline Automobiles Vs. State Of U P And 3 Others), this Court passed the following order :-

"1. Heard Shri Shubham Agrawal, learned counsel for the petitioner and Shri B.P. Singh Kachhawah, learned Standing Counsel for the State-respondents.

2. This writ petition has been filed praying for the following reliefs:-

"(i) Issue a writ, order or direction in the nature of Certiorari quashing the purported clarification with respect to levy of GST on mining activity w.e.f. 01.07.2017 as contained in item H6 of the Press Release issued pursuant to the 45th meeting of the GST Council on 17.09.2021 (Annexure-7 to the writ petition);

(ii) Issue a writ, order or direction in the nature of Certiorari quashing the proceedings initiated by notices dated 7.1.22 and 18.1.22 issued under Section 74(1) of the GST Act (Annexure-2 and 3 respectively to the writ petition)."

3. On 22.03.2022, this Court passed an interim order in Writ-Tax No.343 of 2022 (M/s Siddharth vs. Union of India & 2 Ors.) as under :-

"1. Heard Sri Sujeet Kumar, learned counsel for the petitioner and Sri B.P. Singh Kachhawah, learned standing counsel for the respondent No.3. None appears for the respondent No.1 even in the revised call.

2. This writ petition has been filed praying to quash the demand-cum-show cause notice dated 14.10.2021 issued by the respondent no.3 for service tax under the provisions of the Finance Act, 1994.

3. The sole question involved in the present writ petition is as under :-

"Whether GST and Service Tax are chargeable on the amount of royalty payable to the Government on mining of minerals ?"

4. Learned counsel for the petitioner has invited our attention to the order of Hon'ble Supreme

Citation No. 2022 (5) GSTPanacea 246 HC Allahabad

Court dated 11.01.2018 in Special Leave to Appeal (C) 37326 of 2017 (Udaipur Chambers of Commerce and Industry & Ors. Vs. Union of India & Ors.) which is reproduced below :-

"Heard the learned counsel for the petitioners and perused the relevant material.

Application for exemption from filing certified copy of the impugned order is allowed. Issue notice.

Until further orders payment of service tax for grant of mining lease/royalty by the petitioners shall remain stayed."

5. Learned counsel for the petitioner has invited our attention to another order dated 18.08.2020 in Writ Petition(s)(Civil) No.827 of 2020 (Ranbir Singh Vs. The State of Haryana & Ors.) passed by Hon'ble Supreme Court, which is reproduced below :-

"Issue notice on the application for stay as well as on the writ petition returnable on 28th September, 2020.

Dasti, in addition, is permitted. Liberty to serve standing counsel for the concerned respondent.

List along with SLP(C) No. 37326 of 2017.

Until further orders payment of service tax for grant of mining lease/royalty by the petitioner shall remain stayed."

6. Learned counsel for the petitioner has invited our attention to another order dated 04.10.2021 in Writ Petition (Civil) No.1076 of 2021 (M/s. Lakhwinder Singh Vs. Union of India & Ors.), passed by Hon'ble Supreme Court, which is reproduced below :-

"Issue notice.

Tag with SLP (C) No. 37326 of 2017.

Until further orders, payment of GST for grant of mining lease/royalty by the petitioner shall remain stayed."

7. Learned counsel for the petitioner further submits that the question with regard to the nature of royalty, has been referred to a larger Bench by Hon'ble Supreme Court by order dated 30.03.2011 in Civil Appeal No.4056-4064 of 1999 (Mineral Area Development Authority etc. Vs. M/s. Steel Authority of India and others), which is still pending.

8. An interim order dated 15.11.2021 has been passed by a coordinate Bench of this Court in Writ Tax No.475 of 2021 (M/s. A.D. Agro Foods Private Limited Vs. Union of India) as has been placed before us, which is reproduced below :-

"Heard Shri Vishnu Kesarwani, learned counsel for the petitioner, Shri Sudarshan Singh, learned counsel for the Union of India and Shri Manu Ghildyal, learned Standing Counsel for the State.

While entertaining the writ petition, we had passed the order dated 06.09.2021 which is quoted hereinbelow:-

"On the last date, time was granted to the respondents for filing counter affidavit and the same is still awaited.

Learned counsel for the respondent prays for and is granted three weeks' further time to file counter affidavit. Rejoinder affidavit, if any, may be filed within one week, thereafter. Put up on 08.11.2021, in the additional cause list."

In pursuance of the aforesaid order, counter affidavit has been received.

Upon the matter being taken up, learned counsel for the petitioner has vehemently urged that the royalty payment is tax and not consideration in the context of the privilege parted by the State allowing the petitioner and others to mine sand. That being the nature of the payment made by the

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petitioner, the same is not amenable to GST as it is not consideration either for sale of goods or service provided.

Further reliance has been placed on a Constitution Bench decision of the Supreme Court in India Cement Ltd. and Others vs. State of Tamil Nadu and Others (1990) 1 SCC 12, wherein, nature of royalty payment was considered and it was opined to be in the nature of tax, (in paragraph 34 of the report).

Also, it has been shown that a similar controversy is engaging the attention of the Supreme Court in M/s Lakhwinder Singh vs. Union of India & Ors. in Writ Petition (Civil) No. 1076 of 2021. On 04.10.2021, the Supreme Court has passed the below quoted order:-

"1 Issue notice.

2 Tag with SLP(C) No 37326 of 2017.

3 Until further orders, payment of GST for grant of mining lease/royalty by the petitioner shall remain stayed."

List after two months.

Until further orders, payment of GST for grant of mining lease/royalty by the petitioner shall remain stayed."

9. In view of the above referred interim orders passed by Hon'ble Supreme Court and an interim order passed by a coordinate Bench of this Court , we find that the petitioner has made out a case for interim relief.

10. Let counter affidavit be filed by the respondents within three weeks. Petitioner shall have a week thereafter to file rejoinder affidavit.

11. List after expiry of four weeks before the appropriate Bench alongwith Writ Tax No.475 of 2021 and other similar writ petitions.

12. Until further orders, the impugned demand cum show cause notice dated 14.10.2021 issued by the respondent no.3 with regard to service tax shall remain stayed."

4. Since in similar matters, interim orders have been passed by this Court in the light of interim orders passed by Hon'ble Supreme Court, therefore, the petitioner is also entitled for interim relief.

5. In view of the aforesaid, as an interim measure, it is provided that until further orders of this Court, the demand notices dated 07.01.2022 and 18.01.2022 for the months July 2017 to March 2018 under Section 74(1) of the CGST/UPGST Act, shall remain stayed.

6. Learned counsel for the respondents pray for and are granted three weeks' time to file counter affidavit. Petitioner shall have a week thereafter to file rejoinder affidavit.

7. Connect with Writ-Tax No.343 of 2022."

Learned standing counsel prays for and is granted three weeks' time to file a counter affidavit. Petitioner shall have a week thereafter to file rejoinder affidavit.

Connect with Writ-Tax No.343 of 2022.

Considering the facts and circumstances of the case, the petitioner is also entitled to interim order in terms of the aforequoted interim order passed in the case of **M/S Silverline Automobiles (supra)** and accordingly interim order is granted.

Order Date :- 24.5.2022/vkg