

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR**

D.B. Civil Writ Petition No. 5678/2022

Shree Basant Bhandar Int Udyog

----Petitioner

Versus

Union Of India

----Respondent

Connected With

D.B. Civil Writ Petition No. 5463/2022

D.B. Civil Writ Petition No. 5465/2022

D.B. Civil Writ Petition No. 5519/2022

D.B. Civil Writ Petition No. 5530/2022

D.B. Civil Writ Petition No. 5579/2022

D.B. Civil Writ Petition No. 5807/2022

D.B. Civil Writ Petition No. 5958/2022

D.B. Civil Writ Petition No. 6094/2022

D.B. Civil Writ Petition No. 6178/2022

D.B. Civil Writ Petition No. 6253/2022

D.B. Civil Writ Petition No. 6364/2022

D.B. Civil Writ Petition No. 6368/2022

D.B. Civil Writ Petition No. 6370/2022

D.B. Civil Writ Petition No. 6373/2022

D.B. Civil Writ Petition No. 6513/2022

D.B. Civil Writ Petition No. 6607/2022

D.B. Civil Writ Petition No. 6735/2022

D.B. Civil Writ Petition No. 6878/2022

D.B. Civil Writ Petition No. 7130/2022

D.B. Civil Writ Petition No. 7178/2022

D.B. Civil Writ Petition No. 7190/2022

D.B. Civil Writ Petition No. 7209/2022

D.B. Civil Writ Petition No. 7213/2022

D.B. Civil Writ Petition No. 7254/2022

D.B. Civil Writ Petition No. 7263/2022

D.B. Civil Writ Petition No. 7316/2022

D.B. Civil Writ Petition No. 7330/2022

D.B. Civil Writ Petition No. 7354/2022

D.B. Civil Writ Petition No. 7355/2022

D.B. Civil Writ Petition No. 7368/2022

D.B. Civil Writ Petition No. 7388/2022

D.B. Civil Writ Petition No. 7392/2022

D.B. Civil Writ Petition No. 7395/2022

D.B. Civil Writ Petition No. 7432/2022
D.B. Civil Writ Petition No. 7498/2022
D.B. Civil Writ Petition No. 7554/2022
D.B. Civil Writ Petition No. 7574/2022
D.B. Civil Writ Petition No. 7579/2022
D.B. Civil Writ Petition No. 7584/2022
D.B. Civil Writ Petition No. 7590/2022
D.B. Civil Writ Petition No. 7615/2022
D.B. Civil Writ Petition No. 7692/2022
D.B. Civil Writ Petition No. 7705/2022
D.B. Civil Writ Petition No. 7787/2022
D.B. Civil Writ Petition No. 7795/2022
D.B. Civil Writ Petition No. 7801/2022
D.B. Civil Writ Petition No. 7803/2022
D.B. Civil Writ Petition No. 7804/2022
D.B. Civil Writ Petition No. 7808/2022
D.B. Civil Writ Petition No. 7822/2022
D.B. Civil Writ Petition No. 8407/2022
D.B. Civil Writ Petition No. 8423/2022
D.B. Civil Writ Petition No. 8454/2022
D.B. Civil Writ Petition No. 8492/2022
D.B. Civil Writ Petition No. 8629/2022
D.B. Civil Writ Petition No. 8670/2022
D.B. Civil Writ Petition No. 8671/2022
D.B. Civil Writ Petition No. 8672/2022
D.B. Civil Writ Petition No. 8682/2022
D.B. Civil Writ Petition No. 8748/2022
D.B. Civil Writ Petition No. 8764/2022
D.B. Civil Writ Petition No. 9057/2022
D.B. Civil Writ Petition No. 9227/2022
D.B. Civil Writ Petition No. 9228/2022
D.B. Civil Writ Petition No. 9247/2022
D.B. Civil Writ Petition No. 9253/2022

For Petitioner(s) : Mr. V.K. Agarwal
Mr. Abhay Singla
Mr. Lokesh Mathur
Mr. Rakesh Arora
Mr. D.D. Chitlangi
Mr. Chiranjilal
Mr. Aditya Singhi
Mr. Sharad Kothari
Mr. Manoj Bohra

Mr. Arvind Vyas
Mr. Amit Vyas
For Respondent(s) : Ms. Pratyushi Mehta associate to
Mr. Sandeep Shah, Sr. Advocate-cum-
AAG.
Mr. Rajvendra Saraswat
Mr. Hemant Dutt
Mr. Kuldeep Vaishnav
Mr. Sandeep Bhandawat

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE KULDEEP MATHUR**

Order

05/07/2022

Issue notice to the respondents.

Heard learned counsel for the parties.

This bunch of writ petitions primarily involves the issue of permissibility of raising demand of GST on royalty. The petitioners in these petitions have challenged the notifications whereby, royalty paid by them on mining activity is being subjected to GST and/or notices issued for alleged incriminating discrepancies in returns after scrutiny and analogous proceedings.

In the case of ***M/s Shivalik Silica Vs. Union of India & Ors. (D.B. Civil Writ Petition No.14849/2021)*** decided on 17.12.2021, Division Bench of this Court examined the issue of service tax on royalty, and held that as this Court had already decided this issue against the assessee in the case of ***Udaipur Chambers of Commerce & Industry Vs. Union of India*** reported in ***2018 (8) G.S.T.L. 170 (Rajasthan)***, and even though the same controversy is under consideration of a larger Bench of nine Hon'ble Judges of Hon'ble Supreme Court in the case of ***Mineral Area Development Authority etc. Vs. M/s. Steel Authority of India and Ors.*** and finally, the assessee was

denied the relief sought for. Based on the rejection of the writ petition in the case of Shivalik Silica, Coordinate Division Bench at Rajasthan High Court, Bench Jaipur in a similar matter, has rejected the prayer for interim relief to the extent of proceedings initiated against the assessee for recovery of GST on royalty vide order dated 17.12.2021 passed in ***M/s Shivalik Silica Vs. Union of India & Ors. (D.B. Civil Writ Petition No.14849/2021)***.

This Court is apprised that the judgment rendered by the Division Bench of this Court in the case of ***Udaipur Chambers of Commerce & Industry (supra)***, and which was relied upon in the case of ***M/s Shivalik Silica (supra)***, has been subjected to challenge before Hon'ble Supreme Court by way of Special Leave to Appeal No.37326/2017 wherein Hon'ble Supreme Court has stayed payment of service tax for grant of mining lease/royalty. Thus, for all purposes, effect of the judgment of the Division Bench in the case of ***Udaipur Chambers of Commerce & Industry (supra)*** remains in abeyance.

In this background, we are not persuaded by the argument advanced by the learned counsel for the respondents that the prayer for interim relief in these petitions should be turned down on the basis of the order dated 17.12.2021 passed in D.B. Civil Writ Petition No.14849/2021 more so, when replies are still awaited in these writ petitions.

Thus, reserving the right of the respondents to move for vacation of ad interim stay, if so advised, it is hereby directed that in the proposed recovery of GST on royalty shall remain stayed qua all the writ petitioners. However, the respondents shall be at liberty to continue with the proceedings which have been initiated under the impugned notices.

In fresh matters, notices shall be issued to the respondents. In such writ petitions wherein notices have been issued, the Registry shall check for service upon the respondents and where powers have been filed, names of the respective counsels shall be reflected.

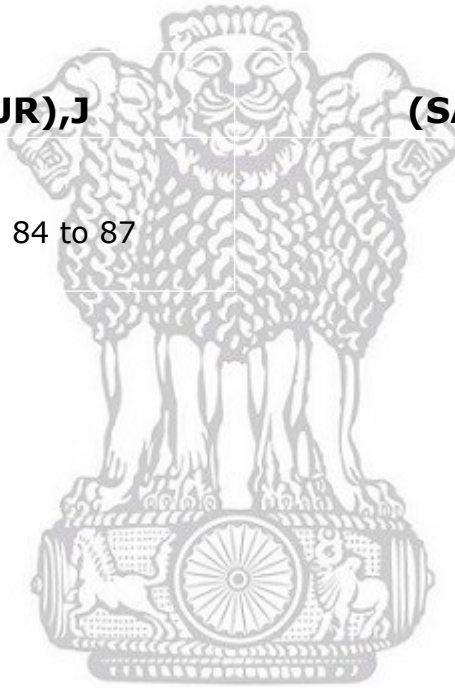
In some of the writ petitions, power has been filed on behalf of the respondents' by counsel Mr. Sandeep Bhandawat, Mr. Hemant Dutt, Mr. Sandeep Shah, learned Sr. Advocate-cum-AAG and Mr. Sunil Bhandari. Thus replies on behalf of the respective Departments, be filed by the next date of hearing.

List on 16.08.2022.

(KULDEEP MATHUR),J

(SANDEEP MEHTA),J

12, 20 to 55, 57 to 82, 84 to 87
Devesh/-



सत्यमेव जयते