

Court No. - 38

Case :- WRIT TAX No. - 699 of 2022

Petitioner :- M/S Jitendra Singh

Respondent :- Union Of India And 5 Others

Counsel for Petitioner :- Amit Upadhyay, Kedar Nath Kumar, Vishnu Kesarwani

Counsel for Respondent :- A.S.G.I., C.S.C., Gopal Verma, Parv Agarwal

Hon'ble Saumitra Dayal Singh, J.

1. Heard Sri Vishnu Kesarwani, learned counsel for the petitioner; Sri Parv Agarwal, learned counsel appearing for respondent no.3 and Sri Jagdish Mishra, learned Standing Counsel for the State-respondents.

2. Present writ petition has been filed to assail the appeal order. Since the Tribunal has yet not been constituted, the present writ petition is being entertained. Challenge has been raised to the First Appeal Order dated 02.07.2021 arising from the earlier order dated 18.06.2018 passed under Section 73 of the U.P. GST Act, 2017. Second, challenge has been raised to the *ex parte* order dated 23.06.2021 passed by the State GST authority pursuant to a notice dated 15.03.2021. Both proceedings are stated to be for the same tax period being Financial Year 2017-18.

3. On merits, it has been submitted, no liability of GST may arise on payment of royalty to conduct mining activity. Reliance has been placed on an interim order dated 15.11.2021 of this Court passed by a division bench in **Writ Tax No. 475 of 2021 (M/s A.D. Agro Foods Pvt. Ltd. Vs. Union of India)** wherein it has been observed as under:

"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 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."

4. It has been stated that the Supreme Court has disposed of Writ Petition (Civil) No. 1076 of 2021 on the ground of alternative remedy.

5. Matter requires consideration, both on the issue of liability to pay GST and royalty as also as to jurisdictional error in the second proceeding for the same tax period.

6. Learned Standing Counsel prays for and is granted six weeks' time to file counter affidavit. Petitioner shall have two weeks' thereafter to file rejoinder affidavit.

7. List on 07.09.2022.

8. Until further order of this Court, demand of GST and payment of royalty pursuant to the orders dated 02.07.2021 and 23.06.2021 as also proceedings pursuant to the notice dated 15.03.2021 shall remain stayed.

Order Date :- 11.5.2022

Abhilash