
[2022] 145 taxmann.com 290 (Andhra Pradesh)/[2022] 66 GSTL 438 (Andhra Pradesh)/[2023] 95 GST 210 (Andhra Pradesh)[31-01-2022]

GST : Notice for payment of GST on royalty paid minerals stayed as matter was active consideration of Supreme Court

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[2022] 145 taxmann.com 290 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Jubilee Granites India (P.) Ltd.

v.

Government of India

AHSANUDDIN AMANULLAH AND B.S. BHANUMATHI, JJ.

W.P. NO. 2040 OF 2022

JANUARY 31, 2022

Levy of tax - Royalty paid minerals - Issue as to whether GST would be chargeable on minerals on which already royalty had been paid - Matter was actively under consideration before Supreme Court - In one of such cases, interim order was passed staying payment of GST for grant of mining lease/royalty - Hence, instant notice for payment of GST was to be stayed [Section 9 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 7]

CASES REFERRED TO

Mineral Area Development Authority v. Steel Authority of India [2011] 4 SCC 450 (para 3), *Lakhwinder Singh v. Union of India* [2021] 131 taxmann.com 168 (SC) (para 4), *Udaipur Chambers of Commerce & Industry v. Union of India* [2022] 137 taxmann.com 324 (SC) (para 4) and *Venkata Sai Granites v. Union of India* [W.P. No. 10407 of 2021] (para 5).

N. Vijay and T. Sreedhar, Ld. Counsel, *for the Petitioner*. **N. Harinath**, Asstt. Solicitor General and **S.A.V. Sai Kumar**, Ld. Asstt. Govt. Pleader *for the Respondent*.

ORDER

Ahsanuddin Amanullah, J. - Heard Mr. N. Vijay, learned counsel representing Sri T. Sreedhar, learned counsel for the petitioner, Mr. N. Harinath, learned Assistant Solicitor General, for the respondent no. 1 and Mr. S. A. V. Sai Kumar, learned Assistant Government Pleader, Commercial Tax, for the respondents no. 2 and 3.

2. The petitioner has moved the Court, for the following relief:

"to issue a direction or Order or writ in the nature of writ of mandamus declaring the 3rd respondent's notice under section 73 of APGST Act, 2017, dated 2-12-2021 with reference to GSTIN 37AABCJ376IDIZR, asking the petitioner to pay GST as arbitrary, illegal, *ultra vires* and unconstitutional and to consequentially *set aside* the same and pass such other order or orders as this Hon'ble Court...."

3. Learned counsel for the petitioner has drawn the attention of the Court to the fact that the petitioner has already paid royalty charges for the minerals extracted, but still, he has been sent notice dated 2-12-2021 with regard to the charging of GST on the same minerals on which royalty has already been paid. Learned counsel

submitted that in *Mineral Area Development Authority v. Steel Authority of India* [2011] 4 SCC 450, after noting the conflict between two earlier decisions of the Hon'ble Supreme Court, the matter has been referred to a Nine Judges Bench of the Hon'ble Supreme Court.

4. Learned counsel for the petitioner submitted that after such reference, when show cause notice for payment of GST was issued, the matter again went to the Hon'ble Supreme Court and in one such case, being Writ Petition (Civil) No. 1076 of 2021 (*Lakhwinder Singh v. Union of India* [2021] [131 taxmann.com 168](#)), the Hon'ble Supreme Court while tagging the case *Udaipur Chambers of Commerce & Industry v. Union of India* [2022] [137 taxmann.com 324](#) SLP (C) No. 37326 of 2017, has passed interim orders staying payment of GST for grant of mining lease/royalty. Thus, learned counsel submitted that the Court may also grant interim protection to the petitioner in the aforementioned terms.

5. It was further brought to the notice of the Court that in similar matter in W.P.No.10407 of 2021 *Venkata Sai Granites v. Union of India* [W.P. No. 10407 of 2021], interim stay has been granted by this Court suspending the impugned show cause notice.

6. Learned Government Pleader, Commercial Tax, submitted that only impugned notice has been issued.

7. Having considered the matter, since the very issue as to whether GST would be chargeable on minerals on which already royalty has been paid is actively under consideration before a Nine Judges Bench of the Hon'ble Supreme Court, in the present matter, the petitioner has made out a case for interim order.

8. Accordingly, the matter be listed after disposal of *Lakhwinder Singh* (*supra*) and *Udaipur Chambers of Commerce & Industry's* case (*supra*).

9. In the meantime, there shall be stay of the notice dated 2-12-2021 issued to the petitioner, which is impugned in the present writ petition.

10. The parties are at liberty to mention the matter before the Court upon disposal of the cases before the Hon'ble Supreme Court.

11. In the meantime, pleadings be completed.