

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

(1) D. B. Civil Writ Petition No. 8109/2022

Sudershan Lal Gupta Contractor, through its Proprietor Sudarshan Kumar Gupta S/o Jagmohan Lal, aged about 60 years, R/o Purani Mandi, Gangapur, Gangapur City, Sawai Madhopur, Rajasthan-322201

-----Petitioner

Versus

1. Union of India, through its Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001
2. State of Rajasthan, through Chief Commissioner of State Taxes, Kar Bhawan, Ambedkar Circle, Jaipur, Rajasthan-302001
3. Central Board of Indirect Taxes and Customs, thorough Chief Commissioner, Central Goods and Service Tax, New Central Revenue Building, Statue Circle, Jaipur, Rajasthan-302001
4. Deputy Commissioner of State Tax, Circle Karauli, Rajasthan-322241.

-----Respondents

Connected With

(2) D. B. Civil Writ Petition No. 5199/2022

1. Rajasthan Small Mines (ChejaPatthar) Lease Holders Association, D-178, Lane No.8 Gautam Marg, Nirman Nagar, Jaipur-2019 through its President Yogesh Katara, aged 53 years Resident of 1148, Rani Sati Nagar, Behind Mansarovar Metro Station, Jaipur, Rajasthan-302019
2. Krishna Grit Udhog, Vill - Nimod, Tehsil Neem Ka Thana, District - Sikar. Also at Village - Garh - Hathipura, Tehsil - Bassi, District Jaipur through its Partner Shri Anurag Goel, aged 39 years, Resident of 203-A, Pratap Nagar, Vashishtha Marg, Khatipura Road, Vaishali Nagar, Jaipur-302021
3. Dilip & Compnay, Khateek Mohalla, Deeg, Bharatpur through its Proprietor Shri Dilip Kumar Sokhla, aged 35 years, Resident of Khateek Mohalla, Deeg, Bharatpur, Rajasthan.

4. Shakambri Stone Crashing Private Limited, D-108, Sanjivani Marg, Vaishali Nagar, Jaipur through its Director Shri Dinesh Kumar Sharma aged 72 years, Resident of D-108, Sanjivani Marg, Vaishali Nagar, Jaipur.
5. Ravi Kumar Vinayak S/o Shri Naresh Kumar Vinayak, aged about 43 years, Resident of 1B7, Chandra Shekhar Azad Nagar, Bhilwara
6. Shri Shyam Baba Stone Industries, Village Meerapur Farm, Tehsil- Kotputli, Dist.- Jaipur, Rajasthan 303107, through its Manager Shri Sachin Kumar Agarwal, aged 31 years, Resident of 56, Shivpuri Arya Nagar, Near Kedia Palace Chouraha Murlipura, Jaipur Rajasthan 302039
7. SAP MINES LLP, Khasra No. 1332, Village Beri, Tehsil- Kotputli Jaipur Rajasthan 303107 through its Partner Sachin Kumar Agarwal aged 31 years, Resident of 56, Shivpuri Arya Nagar, Near Kedia Palace Chouraha Murlipura, Jaipur Rajasthan 302039
8. Tarushi Mines LLP, C-627A, 4C Macheda Akhepura Jaipur Rajasthan 302013 through its Partner Sachin Kumar Agarwal aged 31 years, Resident of 56, Shivpuri Arya Nagar, Near Kedia Palace Chouraha Murlipura, Jaipur Rajasthan 302039
9. Jwala Maa Stone Industries Llp, Khasra No. 75, ML No. 316/93, Village Bhuranpura, Jaipur Rajasthan 303103 through its Partner Sachin Kumar Agarwal aged 31 years, Resident of 56, Shivpuri Arya Nagar, Near Kedia Palace Chouraha, Murlipura, Jaipur Rajasthan 302039
10. Ashamata Stone Crusher, F208, Royal Plaza, Vidhyadhar Nagar, Jaipur through its partner Shri Giriraj Singh, aged 51 years, Resident of D-135, Ambabari, Jaipur
11. Shivraj Chhabarwal S/o Ratanlal Chhabarwal, Resident of Diwan Ka Bas, Post - Sikar, The. Lakshmangarh, Sikar, Rajasthan

-----Petitioners

Versus

1. State of Rajasthan, through Finance Secretary, Secretariat, Bhagwan Das Road, Jaipur-302001
2. Commissioner, Commercial Taxes Department, Rajasthan State Goods and Services Tax, Kar Bhawan, Ambedkar Circle, Jaipur-302001

3. Union of India, through the Secretary Ministry of Finance, Department of Revenue, North Block, New Delhi-110001
4. Chief Commissioner, Central Goods and Services Tax, New Central Revenue Building, Statue Circle, Jaipur-302001

----Respondents

(3) D. B. Civil Writ Petition No. 6391/2022

Jaipur Mines and Minerals, through its Proprietor Mr. Mohit Shukla S/o Gyan Prakash Shukla Age 31, R/o 54, Vijay Nagar, Malviya Nagar, D-Block, Jaipur, Rajasthan - 302017

----Petitioner

Versus

1. Union of India, Under Secretary to the Government of India, Department of Revenue, Ministry of Finance, North Block, New Delhi 110001
2. State of Rajasthan, through Chief Commissioner State Taxes Kar Bhawan, Ambedkar Circle, Jaipur (Raj.)
3. Central Board of Indirect Taxes and Customs, through Chief Commissioner Central Taxes Central Revenue Building, Statue Circle, Jaipur (Raj.)
4. Joint Commissioner (State Tax), Circle-C, Zone Jaipur-II, Commercial Taxes Department, Zonal Kar Bhawan, Jaipur (Raj.)

----Respondents

(4) D. B. Civil Writ Petition No. 9534/2022

M/s. Shri Kalyan Marbles, 42, Shiv Marg, Civil Lines, Raj Bhawan Road, Jaipur through its Proprietor Smt. Meena Devi Sahu W/o Shankar Lal Sahu

Petitioner

Versus

1. The Union of India through Secretary, Finance Department, New Delhi.
2. The State of Rajasthan through Finance Secretary, Government of Rajasthan, Secretariat, Jaipur.
3. The State of Rajasthan through Secretary, Rajasthan Mining and Land Department, Jaipur.
4. The Deputy Commissioner State Tax, Enforcement Wing-I, Circle-B, Jaipur Rajasthan.

Respondents

For Petitioners : Mr. Vedant Agarwal Advocate.
Mr. Anuroop Singhi Advocate with Mr.
N.S. Bhati Advocate.
Mr. Jatin Harjai Advocate.
Mr. Mohit Kumar Soni Advocate.
Mr. Abhay Singla Advocate through
Video Conferencing.

For Respondents : Mr. R.D. Rastogi Additional Solicitor
General with Mr. Devesh Yadav
Advocate.
Major R.P. Singh Additional Advocate
General with Mr. Jaivarshan Singh
Shekhawat Advocate.
Mr. Punit Singhvi Advocate with Mr.
Ayush Singh Advocate.
Mr. Kinshuk Jain Advocate.

HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MRS. JUSTICE SHUBHA MEHTA

Order

27/09/2022

By the Court:(Per Manindra Mohan Shrivastava, Acting CJ.)

1. All these writ petitions have been filed by the petitioners assailing the legality and validity of imposition of service tax/goods and service tax (for short 'GST') on royalty.

In D.B. Civil Writ Petition No. 9534/2022, prayer has been made for declaring Sections 9 and 15 of the Central Goods and Services Tax Act, 2017 (for short 'the CGST Act of 2017')/Rajasthan Goods and Services Tax Act, 2017 (for short 'the RGST Act of 2017') as unconstitutional levying GST on the reverse charge basis on the royalty of the mining extraction. Prayer has also been made for declaring Sections 50, 73 and 74 of the CGST Act of 2017/RGST Act of 2017 as unconstitutional imposing interest and penalty on non-payment of tax under Sections 9 and 15 of the CGST Act of 2017/RGST Act of 2017. Consequential

relief of quashing the show cause notices and declaring all the proceedings as concluded has also been made.

In D.B. Civil Writ Petition No. 8109/2022, Circular No. 164/20/2021-GST dated 06.10.2021 has been challenged insofar as it pre supposes taxability on grant of mining rights under the GST law and to read down Entry No. 5 of Notification No. 13/2017-CT(Rate) dated 28.06.2017 and Entry No. 5 of Notification No. F.12(56)FD/Tax/2017-Pt.-I-51 dated 29.06.2017 to hold that grant of mineral exploration and mining rights are not covered within the scope of supply of services under the GST law. Consequential prayer of quashing notice dated 30.03.2022 for non-deposit of tax has also been sought.

In D.B. Civil Writ Petition No. 5199/2022, the petitioners have prayed for declaration that GST is not leviable on the mining royalty/dead rent. Prayer for quashing Circular No. 164/20/2021-GST dated 06.10.2021 to the extent it relates to applicability of GST on the mining royalty/dead rent has also been made. Petitioners have also prayed for quashing of summons/notices and all proceedings initiated with respect to levy of GST on mining royalty/dead rent. Prayer has also been made for quashing Circular No. 192/02/2016-Service Tax dated 13.04.2016 to the extent it relates to applicability of service tax on mining royalty/dead rent. The petitioner has also prayed for a declaration that GST is not leviable on the contribution to District Mineral Fund Trust (DMFT)/Rajasthan State Mineral Exploration Trust (RSMET) payable to the State Government along with mining royalty and consequential levy of GST on DMFT/RSMET be held as illegal and ultra vires the provisions of the Finance Act, 1994.

In D.B. Civil Writ Petition No. 6391/2022, the petitioner has prayed for quashing Circular No. 16/20/2021-GST insofar as it presupposes taxability on granting mining rights under GST law coupled with prayer for reading down Entry No. 5 of Notification No. 13/2017-Central Tax(Rate) dated 28.06.2017 and Entry No. 5 of Notification No. F.12(56)FD/Tax/2017-Pt.I-51 dated 29.06.2017 and to hold that grant of mineral exploration and mining right is not covered within the scope of supply of services under the GST law. Consequential relief of quashing notice and proceedings has also been made.

Thus, in all the writ petitions, except D.B. Civil Writ Petition No. 5199/2022, the foundation of relief sought is essentially based on the challenge to leviability of GST on royalty.

In D.B. Civil Writ Petition No. 5199/2022, apart from challenge to the legality and validity of imposition of GST on royalty, another relief that GST is not leviable on the contribution to District Mineral Fund Trust(DMFT)/Rajasthan State Mineral Exploration Trust (RSMET) has also been sought.

In the alternative, prayer has also been made to declare that royalty is classifiable under Entry 17(iii) of Notification dated 28.06.2017 as amended and, therefore, in any case, GST on royalty is leviable only @ 5% as applicable on the supply like goods involving transfer of goods.

2. In all the aforesaid writ petitions, learned counsel appearing on behalf of the respondents raised objection to the maintainability of the petitions by submitting that the issue regarding legality and validity of imposition of GST on royalty has been finally decided in more than one case by different Division

Benches of this Court and, therefore, all these petitions, insofar as they seek to challenge legality and validity of imposition of GST on royalty is concerned, are liable to be rejected and dismissed. In support of aforesaid contention, learned counsel appearing on behalf of the respondents relied upon order dated 24.10.2017 passed by the Division Bench of this Court at Principal Seat Jodhpur in the case of **Udaipur Chambers of Commerce and Industry & Others Vs. The Union of India & Another (D.B. Civil Writ Petition No. 14578/2016 and batch of writ petitions)**; order dated 26.07.2021 passed by the Division Bench of this Court in the case of **M/s Mateshwari Minerals & Another Vs. Union of India & Another (D.B. Civil Writ Petition No. 7650/2021)**; Order dated 17.12.2021 passed by the Division Bench of this Court in the case of **M/s Shivalik Silica Vs. Union of India & Others (D.B. Civil Writ Petition No. 14849/2021)** and order dated 28.04.2022 passed by the Division Bench of this Court in the case of **Rajasthan Small Mines (Cheja Patthar) Lease Holders Association & Others Vs. State of Rajasthan & Others (D.B. Civil Writ Petition No. 5199/2022)**.

3. On the other hand, learned counsel appearing on behalf of the respective petitioners would submit that the order passed by this Court in the case of **Udaipur Chambers of Commerce and Industry & Others Vs. The Union of India & Another (supra)** has been challenged in the Hon'ble Supreme Court by filing SLP. It is further submitted that in that case, recovery has been stayed. Learned counsel for the petitioners would further submit that in other cases also, where the order has been challenged, in some of

the cases, interim protection has been granted. Learned counsel would also submit that vide order dated 05.07.2022 passed by Division Bench of this Court at Principal Seat Jodhpur in the case of **Shree Basant Bhandar INT Udyog Vs. Union of India & Others (D.B. Civil Writ Petition No. 5678/2022 and batch of writ petitions)**, interim order has been passed staying the recovery of GST on royalty. Therefore, objection to the maintainability of these petitions may be rejected and present writ petitions may be entertained and interim protection may be granted to the petitioners.

4. During the course of hearing, on the issue with regard to maintainability of these petitions, learned Additional Solicitor General brought to the notice of the Court that in various petitions filed before this Court involving similar issue of leviability of GST on royalty, all the petitions have been dismissed. While SLPs have been filed before the Hon'ble Supreme Court, in some cases interim protection against recovery has been granted, though in some other cases, no interim protection has been granted. He would also bring to the notice of the Court that SLP preferred against order dated 17.12.2022 passed by the Division Bench of this Court in the case of **M/s Shivalik Silica Vs. Union of India & Others (supra)** has been dismissed.

5. Learned counsel for the petitioners would submit that dismissal of SLP is not affirmation of the view taken in the case of **M/s Shivalik Silica Vs. Union of India & Others (supra)** and on the other hand, other petitions challenging order passed on similar issue have been entertained by the Hon'ble Supreme Court.

6. Learned Additional Solicitor General appearing on behalf of the respondent-Union of India as also learned Additional Advocate General appearing on behalf of the respondent-State would submit that though SLPs filed against the orders passed by this Court in the case of **Udaipur Chambers of Commerce and Industry & Others Vs. The Union of India & Another (supra)** and some other cases, deciding identical issue, are pending consideration before the Hon'ble Supreme Court, but none of those orders have been set aside by the Hon'ble Supreme Court.

7. Challenge to leviability of GST on royalty has been repelled and petitions have been finally dismissed. D.B. Civil Writ Petition No. 14578/2016, Udaipur Chambers of Commerce and Industry & Others Vs. The Union of India & Another and batch of writ petitions have been dismissed by the Division Bench of this Court at Principal Seat Jodhpur vide order dated 24.10.2017.

Relying upon the aforesaid decision, D.B. Civil Writ Petition No. 7650/2021, M/s Mateshwari Minerals & Another Vs. Union of India & Another, involving identical challenge, has also been dismissed.

Another petition, i.e., D.B. Civil Writ Petition No. 14849/2021, M/s Shivalik Silica Vs. Union of India & Others has also been dismissed vide order dated 17.12.2021 relying upon the decision in the case of **Udaipur Chambers of Commerce and Industry & Others Vs. The Union of India & Another (supra)**.

In another writ petition, i.e., **D.B. Civil Writ Petition No. 5199/2022, Rajasthan Small Mines (Cheja Patthar) Lease Holders Association Vs. State of Rajasthan & Others**, the

relief, insofar as challenge to leviability of GST on royalty is concerned, has already been rejected relying upon the decision in the case of **M/s Shivalik Silica Vs. Union of India & Others (supra)**. As ordered earlier, this petition will survive adjudication only in respect of other reliefs.

8. It would, thus, be clear that consistent view has been taken by this Court in large number of cases, referred to above, whereby, all the writ petitions, challenging leviability of GST on royalty, have been dismissed. The petitioners, however, are relying upon an interim order dated 05.07.2022 passed in the case of **Shree Basant Bhandar INT Udyog Vs. Union of India (supra)** and similar interim orders passed in some of the cases.

9. Learned counsel for the respondents have contended that once writ petitions have been finally dismissed, these petitions are also liable to be dismissed. Learned Additional Solicitor General would submit that in such a situation, where the issue has been finally decided by passing final order, that final order would alone be construed as precedent and an interim order passed in some of the cases as they do not decide the issue.

10. After hearing learned counsel for the parties, we are of the view that we are bound by the final orders passed by Co-ordinate Benches of this Court in the cases of **Udaipur Chambers of Commerce and Industry & Others Vs. The Union of India & Another (supra)**; **M/s Mateshwari Minerals & Another Vs. Union of India & Another (supra)**; **M/s Shivalik Silica Vs. Union of India & Others (supra)** and **Rajasthan Small Mines (Cheja Patthar) Lease Holders Association Vs. State of Rajasthan & Others (supra)**. The prayer of the petitioners to

entertain the petition on the same issue on the basis of interim order passed in the case of **Shree Basant Bhandar INT Udyog Vs. Union of India (supra)** and similar interim orders passed in other cases cannot be accepted. Once we are faced with final order passed on one hand and interim orders on the other, we have to follow the final verdict of Co-ordinate Bench of this Court.

11. In the case of **State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha (2009) 5 SCC 694**, it was held as below:

"21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as *ratio decidendi*. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a *fait accompli* before the final hearing."

12. Though the orders passed by this Court in the cases referred to above repelling challenge to leviability of GST on royalty have been assailed by filing SLPs before the Hon'ble Supreme Court, learned counsel appearing on behalf of all the parties do not dispute that the issue has not been decided by the Hon'ble Supreme Court and learned counsel for the parties have also brought to our notice that the issue as to whether royalty is in the nature of tax has been referred by the Hon'ble Supreme Court for consideration by the Bench of nine-Judge in the case of **Mineral Area Development Authority etc. & Others Vs. M/s. Steel Authority of India and Others (2011) 4 SCC 450**.

13. In view of above consideration as also relying upon the decision of this Court in the cases of **Udaipur Chambers of Commerce and Industry & Others Vs. The Union of India & Another (supra); M/s Mateshwari Minerals & Another Vs. Union of India & Another (supra); M/s Shivalik Silica Vs. Union of India & Others (supra) and Rajasthan Small Mines (Chejapatthar) Lease Holders Association Vs. State of Rajasthan & Others (supra)**, D.B. Civil Writ Petition No. 8109/2022, 6391/2022 and 9534/2022 are dismissed.

Insofar as D.B. Civil Writ Petition No. 5199/2022 is concerned, the petitioners have challenged imposition of GST on royalty as also prayed for some other reliefs. The relief, insofar as challenge to leviability of GST on royalty is concerned, has already been rejected. As ordered earlier, this petition will survive adjudication only in respect of other reliefs.

Office is directed to place a copy of this order on the record of each connected writ petition.

(SHUBHA MEHTA),J

(MANINDRA MOHAN SHRIVASTAVA),ACTING CJ