

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (T) No. 370 of 2023

M/s RQS Mining Private Limited (earlier known as M/s Dalmia Agencies Private Ltd.) through its Director Subhash Chandra Tulsyan--- Petitioner
Versus

1. Commissioner of State Tax, State Tax Department,
Govt. of Jharkhand, Ranchi
2. Deputy Commissioner of State Tax, Department of State Tax,
Sahebganj Circle, Sahebganj --- --- Respondents

CORAM: **Hon'ble Mr. Justice Aparesh Kumar Singh**
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner: M/s Deepak Kr. Sinha, Piyush Poddar,
Manav Poddar, Advocates
For the Respondents: Mr. Gaurang Jajodia, A.C to G.P-II

04 / 03.04.2023 Let the instant matter be tagged along with W.P (T) No. 432/2021 and analogous cases as it relate to common issue i.e. levy of GST on royalty upon the petitioner who is the lessee of minor minerals in the District of Sahebganj.

2. Petitioner has sought quashing of the show-cause notice dated 28.05.2022 issued by the Respondent No. 2 (Annexure-1), whereby the Deputy Commissioner of State Tax, Sahebganj Circle, Sahebganj has asked the petitioner to file reply as to why taxes to the tune of Rs. 2,58,577.92 be not levied upon him for the period July 2017 to March 2018 on account of GST on royalty.

3. Learned counsel for the petitioner submits that this Court vide order dated 20.04.2022 passed in a batch of writ petitions led by W.P.(T) No. 432 of 2021 in the case of **M/s Mandhan Minerals Corporation Vrs. Union of India and others** have been pleased to grant interim protection from levy of GST on royalty. It is submitted that the issue being common, similar interim protection may be granted to the petitioner pending final adjudication.

4. Learned counsel for the Respondent State submits that counter affidavit has already been filed. Two weeks' time is allowed to the learned counsel for the petitioner to file rejoinder, if necessary.

5. Since this Court has granted interim protection on the levy of GST on mining lease / royalty to similarly situated petitioners vide order dated 20.04.2022 passed in W.P.(T) No. 432 of 2021 and other analogous cases, interim protection in the same manner is being granted to the petitioner herein. Operative portion at Para 9 of the order dated 20.04.2022 is extracted herein below:

“9. Following the interim order passed by the Apex Court in the case of **M/s Lakhwinder Singh (supra)** dated 04.10.2021, this Court had been pleased to grant interim protection on levy of GST on mining lease / royalty/DMF. In the background of the legal position that royalty has been considered to be a tax or profit pendre and the issue is pending before the 9 Judge Constitution Bench, we are of the considered view that the petitioners have made out a case for interim protection. As such, there shall be stay of recovery of GST for grant of mining lease/ royalty/DMF from the petitioners till further orders. However, the Revenue is not restrained from conducting and completing the assessment proceedings.

Since interim protection has been granted earlier in the case of **Sunita Ganguly and others Vrs. Union of India & others** vide order dated 02.03.2021 passed in W.P.(T) No. 3878 of 2020 and other analogous cases on levy of service tax on royalty/DMF, similar interim protection is being granted in W.P.(T) No. 897 of 2022, W.P.(T) No. 903 of 2022, W.P.(T) No. 926 of 2022, W.P.(T) No. 927 of 2022 where the levy of service tax on royalty/ DMF is under challenge. As such, interim order dated 02.03.2021 shall govern the case of said writ petitioners also.”

6. List this case along with W.P. (T) No. 432 of 2021 and analogous cases.

(Aparesh Kumar Singh, J)

(Deepak Roshan, J)

Ranjeet/