

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 4941 of 2017

M/s Imperial Fasteners Pvt. Ltd. --- --- Petitioner

Versus

1. Central Coalfields Limited, Ranchi.
2. Project Officer, Central Coalfields Limited, Bokaro.
3. Principal Commissioner of Central Taxes, Ranchi. --- --- Respondents

CORAM: The Hon'ble Mr. Justice Aparesh Kumar Singh
The Hon'ble Mrs. Justice Anubha Rawat Choudhary

Through : Video Conferencing

For the Petitioner : Mr. Deepak Sinha, Adv.
For the Resp. Nos. 1 & 2 : Mr. Amit Kumar Das, Adv.
For the Resp. No. 3 : Mr. Ratnesh Kumar, Adv.

23/20.07.2020 Learned counsel Mr. Deepak Sinha for the petitioner, Mr. Amit Kumar Das for the C.C.L. and Mr. Ratnesh Kumar for the Union of India are present through video conferencing.

The writ petition was preferred for the following reliefs :

- (a) For quashing and setting aside the letter being Ref. No.KTW/Rejects CPP/17-18/1054 dated 16.08.2017 including the Bill dated 16.08.2017 attached therewith (Annexure-3) issued by Project Officer, Kathara Washery (respondent no.2) whereby and whereunder the said respondent has charged and realized an amount of Rs.400/- per tonne as GST (Compensation Cess) from the petitioner apart from charging of cost of Washery Rejects @ Rs.473/- per tonne for the month of July 2017, which is illegal, arbitrary and malafide in view of the fact that as per Section 9(1) of the Goods and Service Tax (Compensation to States) Act, 2017 the liability of payment of cess is on every taxable person who is making a taxable supply of goods and further as per Section 9(2) of the said Act, every such taxable person shall apply for refunds of such cess paid and admittedly in the instant case respondent CCL is the taxable person who is supplying Washery Rejects to the petitioner and therefore liability to make payment of cess under the aforesaid Act is exclusively upon the respondents.
- (b) For a direction upon the respondent CCL to immediately refund an amount of Rs.54,85,564.00 along with statutory rate of interest, raised vide aforesaid Bill dated 16.08.2017 (Annexure-3) and recovered from the petitioner on account of GST (Compensation cess) for the month of July 2017.
- (c) For restraining the respondent CCL from raising, realizing and recovering GST (Compensation cess) from the petitioner except the cost of Washery Rejects, as has been fixed by the competent authority in this regard.
- (d) For a direction upon the respondents not to charge GST (Compensation cess) in the Bills raised by it on the petitioner for

supplying the Washery Rejects in view of the fact that as per Section 9(1) of the Goods and Service Tax (Compensation to States) Act, 2017 the liability of making payment of cess is on the respondent as it is making a taxable supply of goods and further as per Section 9(2) of the said Act, the respondent shall apply for refunds of such cess paid.

(e) For a declaration that Washery Rejects are waste products of washery and hence do not fall under the category “Coal, briquettes, ovoids and similar solid fuel manufactured from coal, lignite, whether or not agglomerated” as provided in the Schedule of the Goods and Service Tax (Compensation to States) Act, 2017 and therefore out of ambit of Chapter 27 of GST.

(f) For any other appropriate writ(s), order(s), direction(s) as your Lordships may deem fit and proper under the facts and circumstances of this case.”

Counter affidavits have been filed both by the CCL and the CGST and the petitioner has also furnished his reply thereto. Agreement between the petitioner and the respondent CCL for supply of coal rejects dated 14th October 2005 is enclosed as Annexure-1.

Learned counsel for the petitioner however, at the outset, seeks permission to withdraw this writ petition in order to raise the dispute in an arbitration proceeding invoking Clause 22 of the agreement.

Learned counsel for the CCL has, on the basis of the statements made in the counter affidavit, submitted that the writ petition is not maintainable.

Learned counsel Mr. Ratnesh Kumar appears for CGST. A counter affidavit has been filed on behalf of the CGST also. He however does not object to the prayer for withdrawal of the writ petition.

Having regard to the prayer made today, the instant writ petition is dismissed as withdrawn. It is up to the petitioner to invoke any other remedy including arbitration, if permissible in law.

(Aparesh Kumar Singh, J.)

(Anubha Rawat Choudhary, J.)

Shamim/