NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 133 of 2015

- Shree Raipur Cement Plant (A Unit Of Shree Cement Limited) Having Its Office At 31/248 Civil Lines, Raipur (Chhattisgarh) Through Its Authorized Signatory And Senior Vice President (Commercial) Of The Petitioner Company, Shri Arvind Khicha, S/o Shri Inder Mal Khicha Aged About 51 Years And Resident Of 5-6 Nanesh Nagar, Near Jawahar Bhawan, Vinod Nagar, Beawar. (Rajasthan)

---- Petitioner

Versus

1. Commercial Tax Officer Circle- Ill, Commercial Tax Department Near Raj Bhawan, Civil Lines, Raipur (Chhattisgarh)
2. The Commissioner, Commercial Tax Department Near Raj Bhawan, Civil Lines, Raipur (Chhattisgarh)

---- Respondent

For Petitioner	Mr. Sanjay Jhanwar and Mr. Anumeh Shrivastava, Advocates
For Respondent /State	Mr. P.K. Bhaduri, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

26/11/2015

Heard finally with the consent of learned counsel for the parties.

(2) The petitioner is aggrieved by the orders dated 26.10.2015 and 13.08.2015 passed by respondent – Assistant Commissioner, Commercial Tax, Raipur, refusing to refund the amount of Entry Tax paid by the petitioner on limestone.

(3) Learned counsel for the petitioner would argue that the

authority having decided the petitioner's application for refund and having formed an opinion on the subject issue, the question of petitioner's liability to pay the Entry Tax on limestone has been concluded at that level and the petitioner may not be afforded any hearing on this count at the end of the financial year when the assessment would take place. It is argued that the petitioner extracts limestone within the local area Semradih and crushes the stone at the same village and then, it is carried to the cement plant at village Khaparadih through the conveyor belt, therefore, the end use starts from village Semradih itself and thus, there being no movement of limestone from one local area to another local area, the petitioner is not liable to pay Entry Tax. It is also argued that the petitioner is not a dealer of limestone within the meaning of the term defined under the Chhattisgarh Value Added Tax Act, 2005 (in short “the Act”), therefore, otherwise also, the Entry Tax is not leviable on the petitioner for use of limestone.

(4) Per contra, learned State Counsel would submit that the petitioner has paid the entry tax only for two months and thereafter, an application for refund has been moved presumably under Section 39 of the Act, without there being any assessment deciding the petitioner's liability to pay tax on the use of limestone. It is argued that the petitioner will have all the opportunities to raise the issue at the time of assessment. He would further submit that there is no mechanism to challenge the levy midway during the financial year without ever raising the issue before the Assessment Officer.

(5) Having heard learned counsel for the parties, it appears that the question regarding petitioner's liability to pay Entry Tax on limestone is

yet to be decided by the Assessing Officer and as and when, such exercise is undertaken, the petitioner may raise the objection regarding levy of Entry Tax on limestone used by it. All questions, factual and legal, shall remain open for the petitioner to be agitated before the Assessing Officer. It is made clear that the Assessing Officer shall not be influenced by the orders passed by the Assistant Commissioner, Commercial Tax, Raipur, dated 26.10.2015 and 13.08.2015.

(6) With the aforesaid observations/directions, the writ petition stands finally disposed of.

Sd/-

Judge

(Prashant Kumar Mishra)

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