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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (T) No. 77 of 2016**

M/s Century Cement Prop. Century Textiles And Industries Ltd. Having Its Head Office At Industry House, 159 Churchgate Reclamation, Mumbai 400020 And Cement Manufacturing Unit At P.O. Baikunth 493116, District Raipur, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Commercial Tax Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, (Chhattisgarh)
2. Commissioner, Commercial Tax Chhattisgarh, Raipur, (Chhattisgarh)
3. Commercial Tax Office, Circle-9, Division No.2, Devendra Nagar, Raipur, (Chhattisgarh)

---- Respondents

For Petitioner : Shri Ashish Shrivastava, Advocate.
 For Respondent/State : Shri Prafull N. Bharat, Additional Advocate General.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Deepak Gupta, Chief Justice****14/09/2016**

1. In Contempt Petition (C) No.280 of 2016, we have already passed the following order:-

"1. The Petitioner, by means of this Contempt Petition, has prayed for taking action against the Respondents on the ground that the Respondents have violated the judgment of this Court (Annexure C-1) passed in W.P.(T) No.6724/2011 and other connected matters. The relevant portion of the judgment is as follows:-

"22. Resultantly, the notification dated 31.3.2010 and the consequential notifications dated 1.7.2014 and 5.7.2014 are held to be not sustainable to the extent that they impose entry tax at 25% on limestone clinkerised and stock transferred outside the State for

manufacture of cement outside such local area. The impugned notifications are therefore set aside to that limited extent.

23. During the pendency of the writ applications, by order dated 27.8.2014 the Petitioners were required to pay entry tax at the higher rate subject to the result of the writ petition. It is not the case of the Respondents that Clinker was sold by the Petitioners to third parties but has been stock transferred to their own cement units. The Petitioners are therefore held entitled to restitution. The 15% additional entry tax is directed to be refunded to the Petitioners within a maximum period of three months from the date of receipt and/or production of a copy of the order failing which it shall carry interest at the bank rate till date of payment."

2. The State has filed S.L.P before the Apex Court. This S.L.P was dismissed with the following observation:-

"We are not inclined to entertain these petitions. They are accordingly dismissed.

However, we make it clear that in view of the order passed by the High Court on 27th August, 2014, the respondents will be refunded the additional amount only if they have not passed it on to the consumers."

3. This order was passed on 22.4.2015 and the stand of the Respondents is that they are still verifying the fact whether the Petitioner/Company has passed on the tax burden upon the consumers. The case of the Petitioner/Company as stated on affidavit is that it has not passed the burden to the consumers. This will have to be verified by the State by inspecting the records of the Company and the said verification should be completed within a period of six weeks from today. Thereafter, in case the Respondents find that the Petitioner is entitled for any refund of the amount, the same shall be released to the Petitioner within a further period of 6 weeks thereafter.

4. The Contempt Petition is disposed of in the aforesaid terms."

2. In view of the order which we have passed in Contempt Petition (C) No.280 of 2016, it is obvious that till the State decides the issue whether the Petitioner is entitled to any refund or not, we cannot force the Petitioner to pay entire amount. We permit the Petitioner to pay 50% of the demand amount. We make it clear that if later, it is found that the Petitioner is entitled to refund of much higher than he paid then the Petitioner shall not be denied the refund and will not be asked to adjust the refund amount in future payment.

- 3.** In view of this order, the attachment order of the bank account is quashed and the Petitioner may now operate its bank account.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Anu