IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 4797 of 2015

M/s. Royal Infraconstru Ltd. a limited company duly incorporated under the provisions of the Companies Act, 1956, having its Corproate Office at 18, R.N. Mukherjee Road, 6th Floor, PO, PS and District- Kolkata (West Bengal) through its authorized signatory Mr. Sudip Bhowmick, son of Ashim Bhowmick, resident of 20, Purba Sinthee By Lane, PO and PS Dumdum, District- Kolkata (West Bengal)

…Petitioner

-V e r s u s-

1. M/S. RITES LIMITED, a Government of India Undertaking, under the Ministry of Railway and a Government Company within the meaning of Section 617 of the Companies Act, 1956 having its registered Office at Scope Minar, Laxmi Nagar, PO & PS Laxmi Nagar, District- Delhi and Corporate Office at RITES Bhawan, 1, Sector-29, PO Section-29, District Gurgaon (Haryana) and also having its Regional Office at Regional Project Office, 2nd Floor, 56, Metro Railway Service Building, PO C.R. Avenue, PS & District- Kolkata (West Bengal), through its Chairman-cum-Managing Director

2. General Manager (Projects), M/S RITES Limited, having his office at Regional Project Office, 2nd Floor, 56, Metro Railway Service Building, PO- C.R. Avenue, PS and District- Kolkata (West Bengal)

3. General Manager (C), M/S RITES Limited, having his office at Regional Project Office, 2nd Floor, 56, Metro Railway Service Building, PO- C.R. Avenue, PS and District- Kolkata (West Bengal)

4. The State of Jharkhand through Secretary, Mines, Government of Jharkhand, having its Office at Nepal House, PO & PS- Doranda, District- Ranchi

...Respondents

CORAM: - HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner	:- Mr. Vikash Pandey, Advocate
For the State- Respondent	:- Mr. Rishi Pallava, J.C. to A.A.G.
For M/S. RITES Ltd.	:- Mr. Biren Poddar, Sr. Advocate
	Mr. Piyush Poddar, Advocate

03/28.11.2017 The present writ petition was initially filed for issuance of direction upon the concerned respondents to immediately refund an amount of Rs.30,50,000/- as deducted by respondent RITES from the running bills, raised on account of royalty for "Earth work in railway formation, construction of drain, catch water drain, retaining wall in connection with construction of rail infrastructure of Piparwar railway siding of M/s Central Coalfields Ltd. at Piparwar Chatra in as much as the said deductions are illegal, arbitrary, malafide and without any authority of law, in view of the judgment dated 25.03.2015 passed by this Court in the case of petitioner itself being W.P (C) No. 4566 of 2013 and W.P. (C) no. 4569 of 2013.

2. Learned counsel for the petitioner submits that the petitioner preferred writ petitions i.e. W.P.(C) No. 4566 of 2013 and W.P.(C) no. 4569 of 2013 against the deduction from its running Account Bills on account of royalty for "ordinary earth used for filling or leveling purposes in construction of embankment, roads, railways building claiming that unless and until

Schedule II of the Jharkhand Minor Mineral Concession Rules, 2004 is amended and rate of royalty for "ordinary earth used for filling or leveling purposes in construction of embankment, roads, railways, building" is fixed, no royalty for the same is payable to the State of Jharkhand. The said writ petitions were disposed of along with other analogous cases vide order dated 25.03.2015 by a Bench of this Court holding *inter alia* that the "Ordinary Clay" occurring in notification dated 27.12.2010 of the State of Jharkhand is different from "ordinary earth used for filling or leveling purposes in construction of embankment, roads, railways, building" for which rate of royalty has not been fixed by the Government of Jharkhand. In the result, the respondent-State of Jharkhand was restrained from realising royalty for "ordinary earth used for filling or leveling purposes in construction of embankment, roads, railways, building" without amending Second Schedule to the Jharkhand Minor Mineral Concession Rules, 2004 and without prescribing rate of royalty for the same." The present writ petition was thus filed claiming refund of Rs.30,50,000/- in light of the judgment passed in W.P.(C) no. 4727 of 2014 and its analogous cases. However, during pendency of the writ petition, the State of Jharkhand preferred the L.P.A. i.e. L.P.A. No. 705 of 2015 and other analogous cases in which the petitioner's L.P.As. were L.P.A. No. 183 of 2016 and L.P.A. No. 189 of 2016 and the Hon'ble Division Bench of this Court allowed the batch of L.P.As. vide judgment dated 28.06.2016 and held that "ordinary earth used for filling or leveling purposes in construction of embankment, roads, railways, building" is covered by this Entry No. 19 of the notification dated 27th December, 2010 issued by the State of Jharkhand in exercise of the powers under Section 15 of the Act, 1957. The rate of royalty prescribed is 10% of sale price on *ad valorem* basis. This residuary Clause is lost sight of while deciding the writ petitions. Thus, even though, there is no specific rate of royalty prescribed for the "ordinary earth used for filling or leveling purposes in construction of embankment, roads, railways, building", the same is already prescribed as minor mineral by the Central Government in its notification issued under Section 3(e) of the Act, 1957 and, hence, it is covered by Entry no. 19 of the State of Jharkhand"s notification dated 27th December, 2010 and hence, the respondents are liable to make payment of royalty as per Entry no. 19 of the State of Jharkhand's notification dated 27th December, 2010 issued under Section 15 of the Act, 1957.

I.A. No. 9219 of 2017

3. This interlocutory application has been filed by the petitioner seeking amendment in the prayer made in the instant writ petition in light of the judgment dated 28.06.2016 passed in L.P.A. No. 705 of 2015 and other

analogous cases, the details of which are mentioned in paragraph-3 of the interlocutory application.

4. Considering the facts and circumstances of this case, the amendment sought in the prayer of the writ petition through the present interlocutory application is allowed.

5. Learned counsel for the petitioner while referring the judgment rendered by the learned Division Bench of this Court in L.P.A. No. 705 of 2015 (The State of Jharkhand Vs. M/s. MRKR-Pallavi-Upkar JV through its authorized signatory & Ors.) along with analogous cases submits that in view of the judgment of Hon'ble Division Bench of this Court rendered in aforesaid batch of cases, the charging of the royalty on ordinary earth used for filling or leveling purposes in construction of embankment, roads, railways, building is covered by Entry no. 19 of the notification (Residuary Entry) dated 27.12.2010 issued by the State of Jharkhand. Learned counsel further submits that in view of the judgment rendered by the Division Bench in the aforesaid batch of cases, the concerned respondents are still liable to refund the amount of Rs.8,04,120/- as deducted by the respondent- M/S RITES Ltd. from the running bills of the petitioner and deposited with the respondent-State of Jharkhand.

6. Considering the facts and circumstances of the case, the petitioner is at liberty to raise the claim for refund of Rs.8,04,120/- before the respondent-M/S RITES Ltd., who in turn, shall represent the respondent no. 4 for refund of the excess amount deposited by it with the State Government after realizing the same from the petitioner. The respondent no.4 is further directed to take up the said representation and to pass appropriate order after calling for the relevant records within a period of 10 (ten) weeks from the date of filing of such representation before him and if any amount is found refundable, the follow up action shall be taken by the respondent no.4 and M/s. RITES Ltd. for refund of the said amount to the petitioner.

7. It is made clear that this Court has not made any determination of the aforesaid claim of the petitioner, which is to be done by the respondent no.4 on the basis of relevant record keeping in view the law laid down by the Hon'ble Division Bench of this Court in L.P.A. No. 705 of 2015 and other analogous cases.

8. I.A. No. 9219 of 2017 is, accordingly, disposed of.

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9. In view of the order passed in I.A. No. 9219 of 2017, the writ petition is accordingly disposed of.

(Rajesh Shankar, J.)

Ritesh/N.A.F.R.