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HIGH COURT of CHHATTISGARH, BILASPUR

Writ Petition (T) No.139 of 2016

M/s Reliable Sponge Pvt. Ltd. A Private Limited Company Having Its Registered Office At Dua & Dua, Bisra Road, Rourkela (Odisha) 769001, Represented By Shri Rajendra Kumar Dua, S/o Late A. L. Dua, Director, R/o House No. 16, Civil Township, Rourkela, District Sundargarh (Odisha).

----Petitioner

Versus

1. State of Chhattisgarh Through The Secretary Department Of Commercial Tax, Mahanadi Bhawan, Mantralaya, Post & P. S. Mandir Hasaud, Raipur (Chhattisgarh).
2. Assistant Commissioner, Commercial Tax, Office of Commissioner Commercial Tax, Raipur (Chhattisgarh).
3. South Eastern Coalfields Limited, Through Its General Manager (F & A) S E C L Headquarters, Seepat Road, Basant Vihar Police Station Sarkanda, Tahsil And District Bilaspur (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Varun Sharma and Shri Aman Kesharwani, Advocates.
For Respondent/State	:	Shri D. Minj, Dy. Govt. Advocate.
For respondent No.3.	:	Shri Bhuwneshwar Singh Rajput, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

28/07/2017

1. Challenge in the present writ petition is order dated 19.05.2016 passed by the Assistant Commissioner, Commercial Tax, Chhattisgarh, Raipur.
2. The case in brief is that the petitioner had purchased certain quantity of Coal from the respondent No.3-SECL for which they were liable to pay central sales tax. The petitioner had paid the central sale tax. The rate of central sales tax to be collected was 2 percent. However, since the petitioner at the relevant time could not submit eC-Form,

the Central Sales Tax collected was 5 percent.

3. The petitioner had preferred a writ petition i.e. Writ Petition (C)No.8 of 2015 which was disposed of on 17.09.2015 with a direction to the State authorities to examine the claim of the petitioner for refund in accordance with law including the steps to be taken for refund of money, if any, within a period of three months. Consequent to disposal of said writ petition, the impugned order dated 19.05.2016 has been passed. In the impugned order, the Assistant Commissioner has held that in case excess central sales tax was collected by the SECL from its purchaser, then the refund cannot be made to a third party. It could only be paid to the SECL which has deposited money to the State and in case if the party who has deposited the central sales tax to the Govt. moves proper application for refund of the excess amount, the same shall be considered promptly.

4. Learned counsel for the petitioner submits that the petitioner till date has not got the money refunded. Neither the State Govt. is ready to refund the excess amount paid by the SECL to the petitioner nor is SECL taking any steps for getting refund of excess payment made by the petitioner to the SECL.

5. The respondent No.3-SECL, in their reply have in very categorical terms admitted the fact in paragraph 2 of their reply that in the absence of submission of eC-Form at the time of raising of the bills, the SECL was duty bound to charge the CST @ 5 percent and after charging and collecting at this rate, the same is deposited with the

Commercial Tax Department of the State Govt. This admission on the part of the SECL in their reply settles the issue so far as SECL having collected the CST @ 5 percent which ought to had been 2 percent, but for want of eC-Form, the SECL had collected 3 percent extra CST, which on the submission of eC-Form, he is entitled for refund of the excess 3 percent.

6. Counsel for the petitioner submits that the petitioner have already approached the management of SECL for the refund of extra central sales tax.

7. On the last date of hearing i.e. on 09.03.2017, this court had made following observations-

> "A reading of the order Annexure P/1 would indicate that the State is ready to refund the amount to the SECL but not to the petitioner, however, the SECL is not moving any application before the State Govt. seeking refund of the amount.
> It is made clear that if it is found that the SECL is deliberately not making any application before the State Govt. seeking refund of the amount, the SECL would be held liable to pay interest @ 12 percent per annum to the petitioner."

8. Today, when the matter is being taken up for hearing after almost about four months time, the counsel for the SECL submits that he is yet to receive the instruction from the SECL as to whether any steps have been taken for the refund of the amount from the Commercial Tax Department or not.

9. Be that as it may, this court does not feel it proper to keep this petition pending only on this count. In the opinion of this court, ends of justice would meet if this petition is disposed of with a specific direction to the respondent No.3-SECL to immediately take steps, if

already not taken, by moving appropriate application for refund of the excess 3 percent of CST collected form the petitioner, within a period of four weeks from today. The petitioner is also at liberty to make fresh application in the light of disposal of this petition to the management of SECL.

10. It is made clear that if SECL does not take appropriate steps of moving an application to the Commercial Tax Department for the refund of the excess amount within a period of four weeks, the SECL shall be held liable for payment of interest on the excess CST for the delayed refund which would be made to the petitioner. It is also directed that immediately after the receipt of application so made by the management of SECL, the Commercial Tax Department i.e. respondents No.1&2, in turn, shall also immediately process the case and pass an appropriate order in respect of refund, if any, within a further period of four weeks.

11. It is further made clear that in the event if the SECL promptly moves an application and the State authorities sit over the application, then the liability of interest on delayed payment would be shifted upon the State.

12. With the aforesaid observations, the writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

inder