IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8363 of 2008

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Mayaputra Services Pvt.Ltd., a Private Limited Company incorporated under the Companies Act having its office at Moti Nagar Sindri, P.S.- Sindri, District- Dhanbad (Jharkhand) and having its branch office at Koilwar, District- Bhojpur (Ara), Bihar through its Director Punj Kumar Singh, son of Shri Ram Ballabh Pratap Singh, Resident of Dhandia, P.S.- Koilwar, Distt. Bhojpur (Ara).

... ... Petitioner/s

Versus

1. State of Bihar
2. Asstt. Commissioner of Income Tax (TDS)
3. Asstt. Mining Officer, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.D.V.Pathy, Advocate.
For the Respondent/s : Mrs.Archana Sinha, Advocate.
Mr. Naresh Dixit, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-09-2020

Petitioner has prayed for the following relief(s):

i) that the notice dated 12.3.2008 issued by the respondent no.3 (as contained in Annexure 7) be quashed.

ii) for a declaration that the provisions of Section 206C of the Income Tax Act, 1961 (here-in-after called the Act) are not applicable to a contract of settlement of Balu Ghats.

iii) for a declaration that the provisions of Section 206C of the Act apply only at the point of debiting of the amounts payable by the assessee or lessee to the account of the licensee or lessor at the time of receipt of such amount from the said buyer and not at any point of time subsequent thereto.

iv) for granting any other relief (s) to which the petitioner is otherwise found entitled to."

Assailing the impugned order dated 12.3.2008 passed by Assistant Mining Officer, Patna (Annexure-7), Sri D.V.Pathy, learned counsel for the petitioner, while inviting our attention to the judgment passed by the Hon'ble Apex Court in **Hindustan Coca Cola Beverage(P) Ltd. Vs. Commissioner of Income Tax, 2007(8) SCC 463;** decision rendered by a co-ordinate Bench of this Court in CWJC No. 16015 of 2015 titled as Nai Rajdhani Path Parmandal, Road Construction Department Vs. Commissioner of Income Tax & Ors. and order dated 25.5.2007 passed by the Income Tax Appellate Tribunal, Patna Bench, in ITA No. 213/Pat/2007 contends that the Mining Officer had no authority or jurisdiction to raise the demand of TCS with respect to the transactions pertaining to the financial years 2006-07 and 2007-08.

It is next contended that at this point in time, more so in view of the department's own circular as noticed by the Hon'ble Apex Court, as also findings returned by the Tribunal, amount pertaining to TCS cannot be recovered from the petitioner. Also the mechanism provided under Section 206(c) of the Income Tax Act would be unavailable to recover of the amount.

Well, we are of the considered view that all these contentions can be raised by the petitioner, in fact already stands raised vide representation dated 14.3.2008 (Annexure-8), which is still pending consideration before the authority.

As such we see no reason to interfere with the impugned notice dated 12.3.2008 (Annexure-7), more so from the return filed by the petitioner it does not appear as to whether, and if any, amount of component of TCS was deposited by the petitioner.

Also Mrs. Archana Sinha contends that only for the year in question the issue is pending, as for the subsequent period petitioner has already deposited the amount.

Well, the issues raised before us are left open to be considered by the appropriate authority which in the instant case is the Mining Officer who issued notice dated 12.3.2008.

We are not in agreement with the submission made by Sri Pathy that the Mining Officer has already prejudged the issue inasmuch as he has asked the petitioner to pay the amount by way of a Demand Draft. We are of the view that the impugned notice cannot be read in such a manner. The Officer has to adjudicate the amount only after hearing the parties and affording adequate opportunity of filing reply and substantial compliance of principles of natural justice. The officer has only asked the petitioner to deposit the amount, through a Bank Draft, which is due and payable in accordance with law. In any event we clarify that the amount mentioned in the notice be not construed to be determination of the sum due and payable by the petitioner.

As such, we direct the petitioner to appear before the Mining Officer on 5th October, 2020, on which date the petitioner shall file additional material in support of his earlier representation dated 14.3.2008 (Annexure-8). Thereafter after hearing the parties, the Mining Officer shall pass an appropriate order in accordance with law. Parties undertake to fully co-operate.

Since the matter pertains to the years 2006-07 and 2007-08, we direct that all the proceedings must be concluded positively within a period of two months thereafter and if required through virtual mode.

Petition stands disposed of.

Interlocutory application, if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	