**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No. 3286 of 2021**

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Broadson Commodities Pvt. Ltd., a Company incorporated under the Companies Act 1956 having its Office at C/o Dr. Ram Kumar Himanshu, Koilwar, District- Bhojpur, Bihar-802160 through its Director Shri. Ashok Kumar (Male, aged about 65 years) son of Late. Ramchandra Saw, resident of Pareo, P.O. Pareo, P.S. Pareo, Patna 802160.

... Petitioner

Versus

1. Union of India through the Commissioner, Central Tax CGST Patna, having its office at Annexe Building, Central Revenue Building , Bir Chand Patel Marg, Patna.
2. State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan Bailey Road, Patna.

…………… Respondents

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**Appearance :**

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| For the Petitioner/s | : | Mr. D.V. Pathy, Advocate |
| For the Respondent/s | : | Dr. K.N. Singh, ASG |
| | | Mr. Anshuman Singh, CGC |
| | | Mr. Anshay Bahadur Mathur, Advocate |
| | | Mr. Vikash Kumar, S.C. 11 |

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

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**(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)**

**Date : 07-07-2021**

Petitioner has prayed for the following relief(s):

i) the order dated 17.09.2020 (as contained in Annexure -1) passed by the respondent no.1 and 2 under section 98 of the Central Goods and Services Tax Act 2017 (hereinafter called the CGST Act) and Bihar Goods and Services Tax Act, 2017 (hereinafter called BGST Act) classifying mining activity in the nature of licensing services for the right to use minerals including its exploration and evaluation taxable at the rate of 9% CGST and 9% BGST with effect from 01.01.2019 under the residual entries of serial no. 17 of the Notification No.11/2017, Central Tax dated 28.06.2017 as amended by Notification No.27/2018 dated 31.12.2018 Central Tax (Rate) dated 31.12.2018 be quashed.

ii) for a declaration that licensing services for the right to use minerals including its exploration and evaluation fall specifically under heading 9973 (licensing or rental services with or without operator) as notified in item 17 of Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 particularly clause (iii) thereof read with the subsequent Notification No.31/2017 – Central Tax (Rate) dated 13.10.2017 , Notification No.1/2018 – Central Tax (Rate) Central Tax (Rate) dated 25.01.2018 and Notification No.27/2018 Central Tax (Rate) dated 31.12.2018 .

iii) for a declaration that classification of mining activity in the nature of licensing services for the right to use minerals including its exploration and evaluation taxable at the rate of 9% CGST and 9%

BGST with effect from 01.01.2019 under the residual entries of serial no. 17 of the Notification No.11/2017, Central Tax dated 28.06.2017 as amended by Notification No.27/2018 dated 31.12.2018 Central Tax (Rate) dated 31.12.2018

would only fall under the inverted duty structure and consequently, would be refundable and that levy of tax at higher rates on like goods would be constitutionally imperssible.

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

Shri Vikash Kumar, learned Standing Counsel No. 11 invites our attention to the notification dated 21st of September, 2017 whereby the Appellate Authority under the provisions of the Bihar Goods and Services Tax Act, 2017 stands constituted.

In this view of the matter, as prayed for by Shri D.V. Pathy, learned counsel for the petitioner, we dispose of the present petition in the following mutually agreeable terms:-

(a) The petitioner shall file appeal within a period of eight weeks from today;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for hearing of the appeal, already stands deposited. If that were so, the appeal shall be decided on merits. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Appellate Authority. However, if it is ultimately found that the petitioner's deposit is in excess, the same shall be refunded within two months from the date of passing of the order;

(d) We also direct for de-freezing/de-attaching of the bank account(s) of the writ-petitioner, if attached in reference to the proceedings, subject matter of present petition. This shall be done immediately.

(e) The Appellate Authority shall condone the delay, if any, in filing the appeal and decide the appeal on merits after complying with the principles of natural justice;

(f) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(g) During pendency of the appeal, no coercive steps shall be taken against the petitioner.

(h) The Appellate Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(i) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(j) The Appellate Authority shall decide the appeal on merits expeditiously, preferably within a period of two months from the date of filing of the appeal;

(k) The Appellate Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(l) Liberty reserved to the petitioner to challenge the order, if required and desired;

(m) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(n) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;

(o) We have not expressed any opinion on merits and all issues are left open;

(p) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition sands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.

**(Sanjay Karol, CJ)**

**(S. Kumar, J)**

Sujit/PKP-

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| **AFR/NAFR** | |
| **CAV DATE** | |
| **Uploading Date** | 16.07.2021 |
| **Transmission Date** | |