IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9427 of 2022

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M/s Mahadev Enclave Pvt. Ltd., a registered company having its registered office at B-37, Ayodhya Marg, Hanuman Nagar, Jaipur, Rajasthan through one of its directors namely Kartik Rathi male aged about 29 years, S/o Shri Ajay Rathi, R/o 3-B 22 23 Sukhadia Nagar, Sri Ganganagar (Rajasthan).

... ... Petitioner/s

Versus

1. The Union of India through The Additional Director, Directorate General of GST Intelligence, Zonal Unit, Patna.
2. The Additional Director, Directorate General of GST Intelligence, Zonal Unit, Patna.
3. The Deputy Director, Directorate General of GST Intelligence, Zonal Unit, Patna.
4. The Senior Intelligence Officer, Directorate General of GST Intelligence, Zonal Unit, Patna.
5. The State of Bihar through Principle Secretary cum Commissioner, Department of Mines and Geology, Govt. of Bihar, Patna.
6. The Director, Department of Mines and Geology, Govt. of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Advocate Mr. Atal Bihari Pandey, Advocate Mr. Alok Kumar Jha, Advocate
For the UOI	:	Dr. K.N.Singh, A.S.G. Mr. Anshuman Singh, Sr. SC, CGST Mr. Sriram Krishna, JC to ASG
For the State	:	Mr. G.P.Ojha, GA-7 Mr. Ajit Kumar, Advocate
For the Mines		Mr. Naresh Dixit, Advocate Ms. Kalpana, Advocate

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

Date : 21-07-2022

Petitioner has prayed for the following relief(s):-

(a) For issuance of a writ in the nature of certiorari for quashing of the show cause cum demand notice issued by the respondent number 2 vide notice bearing reference number 818 – 823 dated 01.04.2022 and all other proceeding taken up in connection with the same issue whereby the petitioner and its directors have been summoned to defend the demand of GST for a sum of ₹ 240,397,878/– (with respect to the period from July 2017 to March 2020) on royalty paid by the petitioner to the Department of Mines And Geology, Government of Bihar against conferment of licensing services rendered by the Government of Bihar in the shape of grant of license to conduct mining activities in the various districts;

(b) For further restraining the respondents from initiating any process or action against the petitioner and its directors and other/or stakeholders in connection with imposition, demand and recovery of GST allegedly chargeable against the licensing services rendered by the Department of Mines and Geology, Government of Bihar in the shape of grant of mining rights to the petitioner in various districts in the state of Bihar;

(c) For holding and a declaration that the royalty paid by the petitioner to the Department of Mines and Geology, Government of Bihar is payable in terms of the grant of right to carry out mining of sand and stone in the state of Bihar is not a consideration paid against any licensing service rendered by the said government department and therefore no GST is leviable against the same;

(d) For further holding and a declaration that the issue that no service tax is payable on the royalty paid against the grant of mining rights is sub-judice before the Honourable apex court in the matter of Udaipur Chamber of Commerce And Industry And Others Versus The Union of India and others (Special Leave To Appeal Number- 37326 of 2017) wherein an interim order dated 11.01.2018 restraining the recovery of service tax on royalty has been passed by the Honourable apex court;

(e) For further holding and a declaration that the respondents ought to await the verdict of the Honourable apex court on the issue of the true nature of royalty paid by the petitioner being a tax or a consideration against grant of mining rights by the state government which is pending in consideration before the Constitution bench of 9 Honourable Judges in the matter of Mineral Area Development Authority And Others Versus Steel Authority Of India And Others (Civil Appeal Number 4056 – 64 Of 1999 And Other Analogous Cases);

(f) For further declaration that the impugned show cause notice issued by the respondent number 2 and the proceeding initiated against the petitioner under the provisions of the Central Goods And Services Tax Act, 2017 (hereinafter referred to as the central act 2017 for short) would overreach the interim order dated 11.01.2018 passed by the Honourable apex court in the matter of Udaipur Chamber of Commerce And Industry And Others Versus The Union Of India And Others;

(g) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.

It is brought to our notice that the very same issue, subject matter of the present petition, is pending consideration before Hon'ble the Apex Court. As such, present petition is being disposed of on the following mutually agreeable terms:-

(a) The parties shall be bound by the outcome of the decision rendered by Hon'ble the Apex Court in Special Leave to Appeal (C) No(s). 37326/2017, titled as **Udaipur Chambers of Commerce and Industry & Ors. Vs. Union of India & Ors.**

(b) It shall be open for the authorities to proceed with the assessments, but no action precipitating the recovery, if any, shall be taken against the petitioner till such time the matter is decided by Hon'ble the Apex Court. However, we clarify that if the order passed is against the parties, it would be open for the parties to exhaust the statutory remedies or any other alternative remedies, in accordance with law.

Petition stands disposed of in the aforesaid terms.

Interlocutory application, if any, also stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	23.07.2022
Transmission Date	