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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P. (C) No. 7459/2017**

MOHIT MINERALS PVT. LTD. ..... Petitioner

Through: Mr. J.K. Mittal, Advocate with Mr. Rajveer Singh, Ms. Nidhi Gupta, Advocates

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Nitish Gupta, Advcoate for Mr. Ravi Prakash, CGSC along with Mr. Shankar Prasad Sarma, Under Secretary

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% 08.09.2017

1. At the outset, Mr. J.K. Mittal, learned counsel for the Petitioner, points out a clerical error in Para-14 of the order dated 25th August 2017 of this Court. Para-14 of the said order is corrected to read as under:-

> "14. It is made clear that, in the event of the Petitioner succeeding in the present petition, the Petitioner would be entitled to a refund of amount of compensation cess paid under the impugned legislation on such terms which the Court may determine in the final order."

<u>C.M. No. 32866/2017 (directions)</u>

2. Notice. Mr. Nitish Gupta, learned counsel for the Respondent accepts

notice.

3. Mr. Mittal submitted that despite the order dated 25th August 2017 of this Court, the Petitioner has not been able to take credit of the Clean Energy cess already paid (in the sum of around Rs. 7.86 crores on the stocks of coal as on 30th June, 2017) since the forms developed by the Respondents have no column for utilising such credit for making payment of tax. He further explains that various forms are required to be filed online by the Applicant/ Petitioner under the GST regime, such as:

(i) Form Tran-I (for transitional Input credit and stock statement) which is required to be filed for availing credit of VAT input/ Cenvat credit/ cess credit on stock possessed as on 30th June, 2017. Although Form Tran-1can be submitted up to 28th September 2017, since the last date for filing Form GSTR -3B (simplified return format for first two months in lieu of normal returns) for month of July is 10th September 2017, in which the Petitioner has to take the credit of old Cess which is automatically pulled from TRAN-1, the Petitioner has to file Tran-1 by 10th September 2017.

(ii) Further, any credit taken in Tran-I will be carried forward as either CGST or SGST, so even if the Petitioner mentions the figure of Cess in Tran-I then it will be carried forward as CGST which will be available for set off against CGST and IGST and not against the cess. Therefore, the Petitioner has been unable to take credit as granted by the order dated 25th August 2017.

(iii) Further, the last date to file the GSTR-1 (sale return) for the month of July, 2017 is 10th September, 2017. In the said GSTR-1, the Petitioner has to submit details of sales. The last date to file GSTR-2 (purchase return) is 25th September where the data of purchase is to be submitted. The last date to file GSTR-3 (net return along with payment of tax) in which the Petitioner has to pay the tax is 30th September. All the returns are interlinked. If the Petitioner is not able to take the credit of cess paid on stock as on 30th June 2017, it will disturb the whole chain.

(iv) The return forms are the same for payments of Central and States GST. The non-filing or delay in filing returns attracts penalties.

4. Appropriate directions are accordingly sought by the Petitioner in this application, to the Respondents to amend the Form Tran-I and simultaneously GSTR -3B and GSTR-1, GSTR-2 and GSTR-3 where utility of Cess is to be shown and/ or carried forward as cess or any other appropriate directions to the Respondents so that the Applicant/Petitioner could use the credit of cess already paid on the stock held on 30th June 2017 in terms of the order dated 25th August 2017 of this Court.

5. Mr. Mittal further states till such time an appropriate method is not evolved by the Respondents, the Petitioner who is an honest tax payer and is ready and willing to pay all the taxes as required by law, should be permitted to pay the taxes and meanwhile file the returns manually.

6. Mr. Gupta has produced a copy of the letter dated 7th September 2017 addressed to him by the Under Secretary in the Central Board of excise and Customs (CBEC) in which *inter alia* after referring to the order dated 25th August 2017 of this Court it is stated:

> "(iii) After receipt of application, collection of details and due verification department will evolve appropriate method so as to allow the petitioner to avail the credit in light of the order of the Hon'ble High Court either on IT platform or manually. Petitioner may be directed to cooperate by providing all the information as may be required to implement the order."

7. Keeping in view the above submissions, it is directed that the Petitioner will continue to pay the taxes as and when they fall due after availing and utilizing the credit for the cess already paid. This will, however, be subject to the final orders passed by this Court. As regards to the non-filing of returns by the Petitioner on the due dates, till such time an appropriate method/system is evolved by the Respondent which would facilitate utilization of the credit and provide for it in the returns filed electronically, the Respondents will not take any coercive steps against the Petitioner for the failure to file such electronic returns on time.

8. List on 25th September 2017.

9. Order *Dasti* under the Signature of the Court Master.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 08, 2017/*'anb'*