HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

WPT No. 131 of 2018

Shree Raipur Cement Plant (A Unit of Shree Cement Limited) having its Office at 31/248 Civil Lines, Raipur Chhattisgarh through Its authorized Signatory and Senior Manager (Taxation) of the Petitioner Company, Ashish Bharadia, S/o Shri Gopal Bharadia, Aged About 37 Years and Resident of Taxation Department, Shree Cements Ltd., Village Khapradih Thana Khapradih, Tahsil Simga, District Baloda Bazar Bhatapara Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh through Chief Secretary, Government of Chhattisgarh, Commercial And Industrial Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur , Chhattisgarh
2. Additional Secretary, Government of Chhattisgarh, Commercial and Industrial Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisarh.,
3. Director, Directorate of Industries, Udyog Bhawan, Ring Road No. 1, Telibandaha, Raipur, District : Raipur, Chhattisgarh
4. Additional Director, Directorate of Industries, Udyog, Bhawan, Ring Road No. 1, Telibandha, Raipur, District : Raipur, Chhattisgarh
5. Commissioner of Commercial Tax, State Government of Chhattisgarh, Commercial Taxes Department, Kar Bhawan, Civil Lines, Raipur, District : Raipur, Chhattisgarh
6. General Manager District Trade and Industries Centre, Baloda Bazar, Bhatapara, District : Balodabazar-Bhathapara, Chhattisgarh
7. State Level Committee through Its Director of Industries, Udyog Bhawan, Ring Road, No. 1, Raipur District : Raipur, Chhattisgarh
8. State Appellate Forum, Commercial and Industrial Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur , Chhattisgarh
9. Deputy Commissioner, Commercial Tax Department, Division No, 2 Devendra Nagar, Raipur , District : Raipur, Chhattisgarh **--- Respondents**

19.08.2019	Mr. Ranvit Mehta, Mr. Anumeh Shrivastava & Mr. Saurabh Maheshwari, counsel for the petitioner. Mr. Alok Bakshi, Addl. Advocate General for the State. Heard on I.A.No.1/2019 for grant of interim relief. Learned counsel for the petitioner would submit that pursuant to policy evolved by the State, the petitioner has set up a Mega Cement Plant at Baloda Bazar and the final product of this unit is Cement. He	

submits that in the process of manufacture of cement, clinker is produced and the Cement is the ultimate produce. He further submits that the clinker being the intermediate produce, as per the policy of the State, the petitioner's Company was entitled for exemption from payment of entry tax in the State from the date of commercial production i.e., 24.02.2015 i.e.,till the commencement of the GST i.e., 01.07.2017. It is further contended that in the process to get the exemption when the application was filed, the State Level Committee without any appreciation of fact that the clinker is not final product and it comes out during the course of production of cement has held that the clinker is a produce and on that basis partially allowed the application whereas the process itself would show that the partial grant of such application is completely illegal as it goes against the policy of the state itself. It is further contended that when the issue was subject of appeal before the appellate forum of the State, the said appellate forum has dismissed the appeal. Consequently the orders have been passed whereby the petitioner's Company was subjected to assessment and initial amount of Rs.60,20,940/- has been directed to be deposited by subsequent order dated 30th April, 2019. it is further submitted that out of that amount, Rs.5,15,000/- has already been deposited and Rs.55,05,524/- cannot be claimed as the clinker is not a final product of the petitioner, therefore, since the unit was set up for manufacture of cement, they were entitled for exemption of the entry tax for a particular period.

Reply and rejoinder have already been filed in this case.

Heard learned counsel for the parties and also perused the documents.

The stand of the State is that the fact that clinker is not a final produce and is an intermediate product, which comes out during the production of cement is not of much dispute, but the contention of the State is that if the clinker is subject of sale made by the petitioner's Company, then in such a case, it is a commodity for the persons who are receiving the clinker as a product by purchase. The exemption of the State to pay the tax is for the final product of the Cement. Therefore, this issue appears to have been encroached upon each other and the primary finding of the State is that the clinker is subject of sale. Under the circumstances the issue is to be finally gone into.

In the meanwhile, So far as recovery is concerned, it is directed that if the petitioner deposits 40% of the demand made as per the notice Annexure P-18 within a period of 15 days, the remaining part of amount shall not be recovered by any coercive method.

Accordingly, the interim application stands disposed of.

Sd/-

(Goutam Bhaduri)
Judge

Rao