

\$~23

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

+ **W.P. (C) No. 7965/2017**

HIND ENERGY AND COAL

BENEFICATION (INDIA) LTD.

..... Petitioner

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

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Shiva Lakshmi, CGSC with Mr.  
Ruchir Rai, Mr. Sri Ram Krishna, Advocate for R-  
1.  
Mr.Satyakam, ASC for R-2.

**CORAM: JUSTICE S.MURALIDHAR  
JUSTICE PRATHIBA M. SINGH**

**ORDER**

%

**08.09.2017**

**C.M. No. 32855/2017 (Exemptions)**

1. Allowed subject to all just exceptions

**W.P. (C) No. 7965/2017**

2. The issues raised in this petition, which involves a challenge to the validity of the Goods and Services Tax (Compensation to States) Act, 2017 ('Act'), are more or less similar to those raised in W.P. (C) No. 7459/2017 (*Mohit Minerals Pvt. Ltd. v. Union of India*).

3. Notice. Ms. Shiva Lakshmi, the learned CGSC, accepts notice for Respondent No.1 and Mr. Satyakam, the learned ASC, accepts notice for Respondent No. 2. Counter affidavit be filed within four weeks. Rejoinder

*W.P. (C) 7965 of 2017*

*Page 1 of 4*

thereto be filed before the next date of hearing.

4. List on 26<sup>th</sup> October 2017.

**C.M. No. 32854/2017 (interim relief)**

5. In the present case, it is stated that the Petitioner has already paid the Clean Energy Cess under Chapter VII of the Finance Act, 2010 ('FA 2010') on the coal lying in stock on 30<sup>th</sup> June, 2017. Such stock is stated to be around 2,85,418 tonnes, on which the cess already paid is to an extent of Rs. 11.41 crores.

6. In that view of the matter, with regards to the additional levy in terms of the impugned legislation on the aforementioned stock of coal on which the Petitioner has already paid the Clean Energy Cess, the Petitioner should not be required to make any further payment during the pendency of the present petition. However, as far as the stocks of coal on which no Clean Energy Cess was paid, any payment made in terms of the impugned legislation would be subject to the result of this petition. It is ordered accordingly.

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

8. To facilitate the implementation of this interim order, it is necessary for the officers of the concerned Department, charged with the responsibility of levying and collecting Clean Energy Cess on coal to depute a team to the

Petitioner's business premises to verify on how much of the stock of coal Clean Energy Cess under the FA, 2010 already stands paid. Subject to the Petitioner furnishing to the satisfaction of the officers proof of such payment, the Petitioner will be given credit for such payment and will not be required to make any further payment under the impugned Act for effecting sales and clearances. Till such time the said exercise is completed, no coercive steps will be taken against the Petitioner to recover the levy under the impugned Act.

9. It is made clear however, that on those stocks for which the Petitioner is not able to produce a satisfactory proof of already having paid the Clean Energy Cess under the FA, 2010, the Petitioner will be required to pay the cess under the impugned Act. This would be subject to the directions issued hereinbefore.

10. In a separate order passed today by this Court in C.M. No. 32866/2017 in W.P. (C) No. 7459/2017 it was noticed that the CBEC is in the process of evolving an appropriate method for implementing the interim order dated 25<sup>th</sup> August 2017 passed in that case which permitted the Petitioner there to avail and utilise the credit of the cess already paid while paying taxes. At the instance of that Petitioner who explained the difficulties faced in utilising such credit and reflecting it in the electronic returns, this Court has issued certain further interim directions.

11. On the same lines it is directed that the Petitioner here 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.

12. List on 25<sup>th</sup> September 2017.

13. Order *dasti* under the signature of the Court Master.

**S. MURALIDHAR, J.**

**PRATHIBA M. SINGH, J.**

**SEPTEMBER 08, 2017**  
*'anb'*