IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 2023 of 2021

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Adhunik Power & Natural Resources Ltd., through its Authorized Signatory, namely, Ravi Verma ….**PETITIONER**

-VERSUS-

1. Central Coalfields Limited, through its Chairman-cum-Managing Director, having its office at Darbhanaga House, P.O.-G.P.O, P.S. Kotwali, District-Ranchi.
2. General Manager (M&S), Central Coalfields Ltd., having its office at Darbhanaga House, P.O.-G.P.O, P.S.-Kotwali, District-Ranchi.
3. Union of India, through the Principal Chief Commissioner of Income-Tax (TDS), having its office at Central Revenue Building, 5A, Main Road, Ranchi, P.O.-G.P.O, P.S. Chutia, District-Ranchi.
4. Joint Commissioner of Income Tax (TDS), TDS Range, Ranchi, having its office at Central Revenue Building, 5A, Main Road, Ranchi, P.O.-G.P.O, P.S. Chutia, District-Ranchi.
5. Assistant Commissioner of Income Tax (TDS), TDS Range, Ranchi, having its office at Central Revenue Building, 5A, Main Road, Ranchi, P.O.-G.P.O, P.S. Chutia, District-Ranchi. **…..RESPONDENTS**

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CORAM: **HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY**
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. Sujit Ghosh, Advocate
Mr. Ashray Behura, Advocate
Mr. Shubham Gautam, Advocate
For the Respondent-CCL: Mr. Biren Poddar, Sr. Advocate
Mr. Piyush Poddar, Advocate
For the Income Tax Deptt. Mr. R.N.Sahay, Sr. S.C
Mr. Anurag Vijay, Jr. S.C.

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24/Dated: 5th October, 2023

Per Deepak Roshan, J: Heard learned counsel for the parties.

2. The instant Writ application has been preferred by the petitioner for following reliefs:-

a. *Refund of Rs. 7,86,33,649 which had been illegally realised from the Petitioner in the guise of TCS;*

b. *Payment of interest at the rate of 18% per annum on the amount of Rs. 7,86,33,649, from the date of such monies being realised from the Petitioner till the date of refund;*

c. *In alternative to the Prayers above, issuance of directions to Respondents No. 3 to 5 (Revenue) to deposit the amount of Rs. 7,86,33,649/- along with statutory interest pertaining to TCS in the Permanent Account Number of the Petitioner;*

d. *Declaration that the action of Respondents No. 1 and 2 (CCL) and Respondents No. 3 to 5 (Revenue) in neither granting refund of monies illegally realised from the Petitioner nor facilitating adjustment of such monies towards future tax liability of the Petitioner is illegal, arbitrary and violative of Article 14 and 265.*

3. The case of the Petitioner Company is that the Respondents No. 1 and 2 forcefully realised Rs. 7,86,33,649/- from the Petitioner in the guise of Tax Collected as Source (hereinafter to be referred as 'TCS') for the period FY 2012-2013 to the First Quarter of FY 2017-2018.

4. Learned counsel for the petitioner contended that the benefit of Section 206C(1A) of the Income Tax Act, 1961 ought to have been granted to the Petitioner once Form 27C has been submitted by the Petitioner and there exists no material to conclude that the declaration forming part of such Form is false. He contended that once Form 27C has been submitted by the buyer, the concept of a 'mini-trial' does not exist at the time of availment of benefit under Section 206 C(1A) of the Income Tax Act, 1961.

Learned counsel further submits that Para 19(d) of order dated 03.12.2018 passed by this Court in W.P. (C) No. 46/2018, as applied to the Petitioner vide order dated 16.05.2019 passed by this Court in W. P. (C) No. 187/2018, has no applicability to the present case of the Petitioner and instead the Petitioner is governed by Paras 19(a) and 19(c) of the said order. Any solution, wherein the Petitioner is made to wait for the issuance of TCS Certificate or subsequent adjustment of its future tax liabilities by the Income Tax Department until technical glitches are resolved would legitimize the illegal collection of tax and therefore, such an approach cannot be sustained.

Learned counsel contended that Respondents No. 1 and 2 cannot take the defence that it will not refund the money unless the Income Tax Department refunds the TCS. Interest has to necessarily follow the refund of TCS illegally collected from the Petitioner as a matter of course.

5. During course of Hearing, this Court vide its order dated 16.11.2022, recorded the Petitioner's submissions, which is as under:

> **"*6.*** *Petitioner on its part has given a different turn to the entire dispute by stating that as per the stand of the respondent C.C.L. itself, contained in paragraph 7 (c) (vi) and 7 (c) (v) of the counter affidavit dated 6th October, 2021, the demand of Rs.106,55,87,590/- raised by the income tax department was satisfied by the respondent C.C.L., much before tax was actually collected from the petitioner, i.e. on 5 th March, 2018 and 16th March, 2018 respectively. According to the petitioner from the assessment order passed under Section 206 C of the Income Tax Act, dated 10.11.2017 (Annexure A) and Para 10 of the counter affidavit dated 27th June, 2022 of respondent C.C.L., it would be evident that out of total 192 parties only in respect of one party namely M/s Gautam Coal Works Pvt. Ltd. it was established by the I.T. department that they were engaged in trading of coal which were not put to use in their own manufacturing since their plant was closed since last two years. In respect of the other parties, post survey investigation query letters dated 25th October, 2017 were sent to 20 number of parties. The chart, appearing in the assessment order dated 10th November, 2017 does not disclose the name of the petitioner. As such, the collection of the amount of Rs. 7.86 crores from the petitioner as tax deducted at source was neither backed by the assessment order passed by the Deputy Commissioner of Income Tax (T.D.S. Circle) Ranchi dated 10.11.2017 nor such collection of tax was actually deposited in the coffers of the Central Government. The amount therefore lies illegally retained in the hands of the C.C.L. which it is obliged to refund.***"**

Accordingly, upon consideration of the arguments placed by the parties to the lis, this Court recorded as follows:

> **"*8.*** *The relevant material details taken note from the pleadings on record hereinabove and consideration of the rival submission of the parties present a situation that Rs. 7.86 Crores has been admittedly collected by the C.C.L in the name of tax collected at source but the relevant details thereof required to be submitted to the Income Tax Department in the Form 27 EQ have not been submitted nor the T.C.S. certificate in lieu thereof has been issued in favour of the petitioner. The above position cannot be countenanced in law. In case the collection of tax deducted at source for the period 2012-13 to 2017-18 cannot be furnished in one go in form 27 EQ as they are to be filed quarterly by the C.C.L. to the income tax department, the respondent C.C.L. also may have a genuine difficulty in not being able to provide the details of the tax collected from different buyers including that of the petitioner even if it is accepted for the time being that the tax collected from the petitioner has also been deposited with the Central Government. In order to resolve this intractable position the concerned authority of the Income Tax Department has to provide a solution as the collections of tax at source in one go in the last two quarters of the year 2017-18 have been made by the C.C.L. only pursuant to the assessment order dated 10.11.2017 (Annexure A to the counter affidavit of CCL dated 06.10.2021) passed under Section 206 C of the Income Tax Act, by the Deputy Commissioner, T.D.S. Circle, Ranchi.*
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> ***9.*** *As such, we direct the Joint Commissioner of Income Tax, T.D.S. Range, Ranchi and the Deputy Commissioner Income Tax T.D.S. Circle, Ranchi to appear before this court on the next date. It is expected that the concerned officers would come out with a tangible solution to this issue."*

6. Thereafter, vide Order dated 30.11.2022, this Court recorded as under:

> "*Learned Additional Commissioner of Income Tax Mr. Jha submits that the issue has been deliberated upon with the Central Processing Centre, TDS Ghaziabad. The matter relating to issuance of TCS certificate for the amount collected by the Respondent-CCL from the petitioner and others, as reflected in the order dated 16.11.2022, can be resolved irrespective of the fact that such amount was collected in the last two quarters of 2017-18 for the past 6 years. An affidavit to that effect would be filed by the Additional Commissioner of Income Tax, TDS, Range-II, Ranchi within a week.*"

7. Accordingly, in compliance to the Court's orders dated 16.11.2022 and 30.11.2022, Respondents No. 3 to 5 (Revenue), vide Affidavit dated 06.12.2022, laid down the procedure for the issuance of TCS certificates by Respondents No. 1 and 2 (CCL) in favour of the Petitioner.

However, since the procedure as laid down by Respondents No. 3 to 5 (Revenue) would result in the issuance of TCS certificates by Respondents No. 1 and 2 (CCL) to the limited extent of the monies collected as TCS from the Petitioner, i.e., the principal quantum amounting to Rs. 6,25,58,318.89/-, and would not contain the interest component amounting to Rs. 1,60,75,329.93/-; the Petitioner filed its Rejoinder dated 21.02.2023 whereby it brought on record its grievances in relation to the procedure prescribed by Respondents No. 3 to 5 (Revenue), vide Affidavit dated 06.12.2022, for the issuance of TCS certificates in favour of the Petitioner.

The submissions placed by the Petitioner in this regard specially made in Para-10, 11, 12, 14 & 16 are detailed as under:

(i) The Petitioner apprehended that if TCS certificates come to be issued in favour of the Petitioner by Respondents No. 1 and 2 (CCL) by following the procedure laid down by Respondents No. 3 to 5 (Revenue) vide Affidavit dated 06.12.2022, then the benefit of credit of TCS would not actually inure to the Petitioner.

(ii) Under the returns filed for the period of dispute, the Petitioner had neither accounted for, nor claimed such credit of TCS, as on the date of filing of the returns TCS certificates had not been issued in favour of the Petitioner. Such being the case, the Petitioner apprehended that the IT Department would not allow the TCS credit to flow in favour of the Petitioner.

(iii) The Petitioner could not revise its returns under Section 139(5) of the IT Act for the period under dispute so as to account for the credit of TCS as the due date to file revised returns had lapsed.

(iv) The Petitioner prayed for the grant of simple interest under Section 244A by the Assistant Commissioner of Income tax Central Cir 1(1), Kolkata, i.e., the Assessing Officer in relation to the monies collected from the Petitioner under Section 206C.

(v) The Petitioner prayed for directions from this Court that the Assessing Officer be directed to open assessments of the Petitioner for the period under dispute to the limited extent of allowing the Petitioner to account for and claim the benefit of TCS in its returns or directing the Assessing Officer to rectify earlier orders so as to allow the credit of TCS along with interest as per law.

8. During the interregnum, in February 2023, Respondents No. 1 and 2 (CCL) issued TCS certificates to the Petitioner for the period under dispute upon following the procedure prescribed by Respondents No. 3 to 5 (Revenue) as had been detailed in Affidavit dated 06.12.2022. However, the issuance of TCS certificates in favour of the Petitioner was a mere paper relief and did not bring quietus to the present lis; vide order dated 06.04.2023 this Court recorded as follows:

> "*2. Learned counsel for the petitioner points out that TCS Certificate has been issued now for a sum of Rs. 6,25,58,318.89 by CCL. The interest part deducted by the CCL and deposited in the coffers of the Department to the tune of Rs. 1,60,75,329.93 is yet to be returned.*"

Furthermore, this Court took on record the order dated 23.01.2023 passed by the Ld. ITAT, Ranchi Bench at Kolkata in I.T.A. No. 38/RAN/2021; whereby Assessment Order dated 15.11.2017 treating Respondents No. 1 and 2 (CCL) as an Assessee in default on having failed to collect tax at source in terms of Section 206C(1A) read with Rule 37C of Income Tax Rules, 1962, had been held to be bad in law.

This Court further recorded that the Petitioner flagged three issues which persisted despite the issuance of TCS Certificates in its favour. Para 4 of the order dated 06.04.2023 reads as under:

> "*i. Petitioner Assessee is unable to take the benefit of TCS Certificate in respect of the Financial Year 2012-13 till the Financial Year 2016-17 and first quarter of Financial Year 2017-18 in view of the time lapse when it has been issued. The Department has agreed to allow CCL to issue TCS Certificate for the relevant years pursuant to the order of this Court only. Therefore, effect of these TCS certificates for the relevant Financial Years needs to be given effect to by the concerned Assessing Officer, otherwise, it will be of no use.*
> *ii. Since the TCS Certificate has been issued after five years of deduction made by the CCL, petitioner is entitled to interest over the amount deducted under section 244A of the Income Tax Act.*
> *iii. The interest component on TCS amounting to Rs. 1,60,75,329.93 also deserves to be restituted to the petitioner upon issuance of TCS certificate for the relevant Financial Years.*"

Upon recording the aforesaid, this Court issued directions at para 5 in the order dated 06.04.2023 which is extracted herein below:

> "*5. Learned counsel for the Income Tax Department Mr. Ratnesh Nandan Sahay seeks and is allowed two weeks' time to obtain categorical instruction on all the issues and file counter affidavit at least two days in advance.*"

9. In compliance to the order dated 06.04.2023 passed by this Court, Respondents No. 3 to 5 (Revenue) filed a Supplementary Affidavit dated 13.06.2023 wherein it was expressly averred that in view of the Ld. ITAT's Order dated 23.01.2023, the IT Department was required to refund the entire sums of amount to CCL which was realized by treating CCL as an Assessee-in-Default vide Assessment order dated 10.11.2017. Para 12 of the Affidavit is extracted herein below:

> "*That it is humbly stated and submitted that in view of the said order of the Ld. ITAT, the Income Tax Department is required to refund the entire amount to M/s CCL which was realized by the Income Tax Department by treating it as "assessee- in-default" by the AO vide his Assessment order dated 10.11.2017.*"

Furthermore, the Revenue proposed two possible solutions to mitigate the grievances of the Petitioner recorded under this Court's order dated 06.04.2023. Para- 14, 16 & 17 is quoted herein below:

> **"*14.*** *First, the petitioner, M/ s ANPRL may approach its jurisdictional Assessing Officer, produce the TCS certificates issued by M/ s CCL and get the refund of the principal amount as well as the statutory interest as provided under section 244A of the Income Tax Act.*
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> *.....*

> ***16.*** *..... It is found that the benefit of excluding the time period of legal proceedings pending before any Court of Law will not be available to majority of buyers (the collectees) who have not filed any legal suites. Also, in the case of those buyers, who do not fulfil the criterion of filing returns and claiming refund, the claim of refund would get barred by limitation period of six years from the end of relevant assessment year. The process of giving refund to each taxpayer in a multiple jurisdiction all over India on the basis of the latest CBDT circulars will be a gigantic exercise, time consuming and may lead to further litigation.*"
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> "***17.*** *That it is most humbly stated and submitted that the second option is that the entire amount of Rs.106.56 Cr may be refunded by the Income Tax Department to M/ s CCL and then it shall be their responsibility to issue refund to the petitioner, M/s ANPRL and others, if any. However, to avail this option, M/s CCL will have to revise its quarterly returns filed before the Income Tax Department so that the amount of Rs.63.15 Cr already claimed/ consumed will again become "unclaimed/unconsumed" to avoid double payment of refund.*"

10. Pursuant to the aforesaid Supplementary Affidavit dated 13.06.2023 filed by the Revenue, the petitioner company filed a Reply-Affidavit dated 11.07.2023.

Vide the Reply-Affidavit dated 11.07.2023, the Petitioner highlighted that it was not amenable to grant of relief in terms of Option No. 1 since the said solution did not involve the refund of the interest component of Rs. 1,60,75,329.93/-, and that further the said solution was time-consuming and circuitous thereby serving as a mere paper relief. Accordingly, the Petitioner prayed for the grant of relief in terms of Option No. 2 and expressly undertook not utilize the TCS certificates previously issued to it by Respondents No. 1 and 2 (CCL) so as to facilitate the grant of relief. The Petitioner further prayed that the grant of relief be effected in a time-bound manner.

The relevant portion of the Affidavit is hereunder:

> "*15. Accordingly, the Petitioner prays before this Hon'ble Court that relief in terms of* ***'Option No. 2'*** *as detailed in the forgoing paras, which serves as the only effective relief between the two solutions proposed by Respondents No. 3 to 5, be granted in favour of the Petitioner, regardless of the consequences it may have for other assessees, if any. The Petitioner expressly undertakes to not utilize the TCS certificates issued to it by Respondents No. 1 and 2, in order to facilitate the grant of relief in terms of* ***'Option No. 2'****. The Petitioner further submits before this Hon'ble Court that considerable time has lapsed since the Petitioner was illegally deprived of its monies by Respondents No. 1 and 2, with the said Respondents realising monies from the Petitioner in the guise of TCS on 05.03.20218 and 16.03.2018. Thus, to such extent, the Petitioner prays*

> *that the solution proposed by Respondents No. 3 to 5 and referred to as **'Option No. 2'** herein be put into effect in a time-bound manner vide an order passed by this Hon'ble Court.*"

The Petitioner further prayed for the grant of statutory interest under Section 244A which would stand at Rs. 2,55,55,936/- as on 31.07.2023.

11. A Rejoinder/Reply dated 04.08.2023 of Respondents No. 1 and 2 (CCL) to Supplementary Affidavit dated 13.06.2023 of Respondents No. 3 to 5 (Revenue) has also been filed. In the Rejoinder/Reply dated 04.08.2023, Respondents No. 1 and 2 (CCL) conveyed that it has no objection to Option No. 1.

It was further submitted by Respondents No. 1 and 2 (CCL) that it had no objection to Option No. 2 also, provided that Respondents No. 3 to 5 (Revenue) undertakes not to challenge the Ld. ITAT's order dated 23.01.2023 The relevant portion of the Affidavit is hereunder:

> "*7. That it is further stated and submitted that as regards Option/Possible Solution No. No. 2 , M/s C.C.L. will not have any problem in that also, provided the Income Tax Department accepts the order passed by ITAT, passed in ITA No. /2021 dated 23.01.2023, decided in favour of , (which is already on record) and undertakes before this Hon'ble Court that the Income tax department will not dispute the said order passed by ITAT in favour of M/s CCL by filing appeal before this Hon'ble Court or before the Hon'ble Supreme Court*."

It was also clarified by the Respondent-CCL that the interest component of Rs. 1,60,75,330/- was not lying with the said Respondents but is lying with Respondents No. 3 to 5 (Revenue). It was further stated that the said Respondents had no objection if this Court directs Respondents No. 3 to 5 (Revenue) to directly refund the interest component to the Petitioner.

12. Considering the various orders passed by this Court and the Supplementary Affidavit 13.06.2023 of Respondents No. 3 to 5 (Revenue), Reply-Affidavit of the Petitioner dated 11.07.2023 and the Rejoinder/Reply dated 04.08.2023 of Respondents No. 1 and 2 (CCL), the following key points emerge:

(i) The root cause of the present *Lis* lies in the illegality committed by the Revenue in compelling Respondent No. 1 and 2 (CCL) in effecting TCS *qua* the transactions of purchase of coal which according to the

Petitioner was genuinely used in generation of power. Such TCS was affected by Respondent No. 1 and 2 (CCL) even though appropriate Form 27C was issued by the Petitioner with a verification that the goods so purchased would be used for the purposes of generation of power.

(ii) The above stand of the Respondents No. 3 to 5 (Revenue) also lead to Respondent No. 1 and 2 (CCL) being declared as an Assessee-in-Default for not having collected TCS in respect of transactions made with various parties where one such party was the Petitioner. That allegation has been quashed by the Ld. ITAT vide its order dated 23.01.2023.

(iii) While in its Petition the Petitioner had prayed that the illegal sums collected as TCS should be forthwith refunded along with interest recovered in respect thereto as also statutory interest, this Court deemed it appropriate that instead of a refund, issuance of a TCS certificate by Respondents No.1 and 2 (CCL) for the period 2012-2013 to 2017-2018 may in the alternative be an effective relief to the Petitioner. Accordingly, this Court directed Respondents No. 3 to 5 (Revenue) to provide a tangible solution for the issuance of TCS certificates for the period under dispute.

(iv) In compliance with this Court's directions, Respondents No. 3 to 5 (Revenue) provided the procedure for the issuance of TCS certificates by Respondents No. 1 and 2 (CCL) to the Petitioner. In response, however, the Petitioner highlighted that the TCS certificates which would be issued by Respondents No. 1 and 2 (CCL) would not be capable of being utilized by the Petitioner because of the lapse in time in issuance thereof. Nonetheless, pursuant to the procedure provided by Respondents No. 3 to 5 (Revenue), Respondents No. 1 and 2 (CCL) issued TCS certificates to the Petitioner in February 2023 pertaining to the period FY 2012-2013 to the First Quarter of FY 2017-2018.

(v) Post the issuance of TCS certificates to the Petitioner, vide its order dated 06.04.2023, this Court recorded that as per the Petitioner, three issues remained unresolved, which were:

a. The Petitioner was unable to take benefit of the TCS certificates;

b. The Petitioner was entitled to statutory interest under Section 244A of the Act.

c. The Petitioner deserved to be restituted of the interest component of TCS amounting to Rs. 1,60,75,329.93/-.

(vi) It is in respect to the resolution to the three issues referred to herein above; *Option No. 2* has been suggested by Respondents No. 3 and 4 (Revenue) in their Supplementary Affidavit dated 13.06.2023 and concurred by Petitioner as also Respondents No. 1 to 2 (CCL). As such therefore, *Option No. 2* proposed by the Respondents No. 3 to 5 (Revenue) was suggested by them in compliance with a direction of this Court and Respondents No. 3 to 5 (Revenue) is therefore bound by the same.

13. Having heard learned counsel for the parties and after taking cognizance of the statements made in the Supplementary Affidavit dated 13.06.2023 filed by the Respondents No. 3 to 5 (Revenue); we hereby direct that the entire sums of money collected as TCS from the Petitioner along with interest thereon, i.e., Rs. 6,25,58,318.89/- (towards TCS) plus Rs. 1,60,75,329.93/- (towards interest), amounting in toto to Rs. 7,86,33,649/-, be refunded by Respondents 3 to 5 (Revenue) to Respondents No. 1 and 2 (CCL) who should thereafter forthwith refund the same to the Petitioner in a time-bound manner.

(a) The Refund by Respondents No. 3 to 5 (Revenue) to Respondents No. 1 and 2 (CCL) referred to above is directed to be affected within six weeks from the date of this order and in turn the Respondents No. 1 and 2 (CCL) shall refund the same to the Petitioner within two weeks thereafter. Should any of the Respondents delay in meeting the aforementioned timelines then statutory interest as per the Act on Refund will be granted in favour of the Petitioner and payable by the defaulting Respondent.

(b) Taking cognizance of the undertaking made by the Petitioner vide its Reply-Affidavit dated 11.07.2023 after the directions as above are implemented in substance by the aforementioned Respondents; then the Petitioner would abstain from utilizing the TCS certificates previously issued to it so as to facilitate the grant of relief in terms of '*Option No. 2*'.

14. At this stage it is pertinent to refer the Rejoinder/Reply dated 04.08.2023 of Respondents No. 1 and 2 (CCL) filed in response to Supplementary Affidavit dated 13.06.2023 of Respondents No. 3 to 5 (Revenue) submitting therein that M/s C.C.L. will not have any problem as regards to Option/Possible Solution No. No. 2; provided the Income Tax Department accepts the order passed by ITAT, passed in ITA No.-38/RAN/2021 dated 23.01.2023, decided in favour of CCL and undertakes not to challenge the same by filing appeal before this Court or before the Hon'ble Supreme Court.

We categorically clarify that Appeal under 260A is a statutory right and we cannot prevent anyone, either Assessee or Revenue from availing such right. As such the said plea of Respondent CCL is misconceived and hence rejected.

Before parting, it is also pertinent to indicate that for other interests as claimed/prayed by the petitioner herein is concerned; the petitioner would be at liberty to move competent Civil Court for redressal of his grievance of interest, if so advised.

15. As a result, the instant writ application is disposed of in the manner indicated herein above. Pending I.A., if any, also stands disposed of.

(Rongon Mukhopadhyay, J)

(Deepak Roshan, J)

Amardeep/-