(2003) 06 JH CK 0062

In the Jharkhand High Court

Case No : Writ Petition (T) No. 890 of 2003

Abrest Engineering Company — APPELLANT

Vs

State of Jharkhand and Others — RESPONDENT

Date of Decision : 16-06-2003

Acts Referred:

Bihar Finance Act, 1981 — Section 43
Bihar Sales Tax Rules, 1983 — Rule 26A

Citation : (2003) 3 JCR 110 : (2004) 138 STC 319

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Rajiv Agarwal, S.K. Gododia and B.P. Mishra, for the Appellant; GP-III, for the Respondent

Final Decision : Allowed

Judgement

1. The writ petitioner is a works contractor. It is a dealer within the meaning of the Bihar Finance Act, 1981. During the assessment years 1994-95 and 1995-96, the petitioner entered Into works contract with M/s. Tata Iron and Steel Company Limited (TISCO). The Tate Iron and Steel Company Limited, as enjoined by Section 25A of the Bihar Finance Act, deducted tax at source and deposited the same with the Sales Tax Department.Sub-sequently, in the decision In the Builders Association of India v. State of Bihar 85 STC 362 Section 25-A of the Bihar Finance, Act was struck down as unconstitutional. Though the Legislature amended the section, subsequent thereto, the amended provision was also declared ultra vires by the Court in M/s. Larson & Toubro v. State of Bihar 1993 (3) PLJR 960.

2. According to the petitioner, it became entitled to refund of the tax deducted at source. It therefore made an application for refund on 2.6.1998. In terms of Section 43 of the Bihar Finance Act, any amount refundable under the Act if not refunded within six months from the date of receipt of the application in that behalf from the dealer, shall carry interest @ 9% per annum with effect from the

date of expiry of the period of six months. According to the petitioner it became entitled to interest on the amount to be refunded, @ 9% per annum from 3.12.1998.

3. Since the amount was not paid, the petitioner filed the present writ petition on 14.2.2003, inter alia, for the issue of a writ of mandamus directing the State and the department, to refund the amount with interest thereon, pending the writ petition, on 22.2.2003, refund vouchers were issued to the petitioner. According to the petitioner, no interest was included in the refund vouchers. Meanwhile, the department also filed a counter affidavit essentially taking the stand that time was taken for verifying the amount due to the writ petitioner and that was the reason for the delay in making the refund applied for on 2.6.1998. Since it was not a deliberate act on the part of the department, this Court may not direct payment of interest on the amount refunded, from 2.12.1998 till the date of issuance of the refund vouchers.

4. Under the statutory scheme, it is clear that on the expiry of six months from 2.6.1998, the petitioner became entitled to interest on the amount to be refunded. During the course of hearing, learned counsel for the respondents submitted that time was taken for verifying the amount deposited in the treasury on deduction at source by the person responsible for making the payment to the petitioner, the assessee and without actually verifying the figure, the refund could not be made. He pointed out that regarding one claim by the petitioner, it was actually found that something more than what was claimed by the petitioner was deducted and deposited and an amount higher than that claimed had been refunded.

5. Learned counsel for the petitioner, on the other hand, submitted that Section 43 of the Bihar Finance Act was very clear in its term and the assessee could not be deprived of the interest due to it on the alleged ground of delay in verifying the deposits in the treasury. Learned counsel also pointed out that there could not be any difficulty in ascertaining the amount or in determining the actual amount deducted and deposited by the person responsible for making the payment, if one were to go by Rule 26-A(3)(i) of the Bihar Sales Tax Rules. Counsel also pointed out that if any one who had deducted the tax at source had not deposited -the tax thus deducted into the Government Treasury in terms of the Act and the Rules, he was liable to penalty in terms of Section 25(A)(6) of the Bihar Finance Act, 1981. Counsel, therefore, submitted that the plea that time was taken for verifying the treasury records or deposits was simply an alibi and the motive for delaying the payment was something else. Learned counsel for the department submitted that even though Rule 26-A(3)(i) of the Sales Tax Rules provided that the person making the deduction u/s 25-A(1) was responsible for depositing the amount in treasury u/s 25-A(3) of the Bihar Finance Act by a separate Treasury challan in Form XVII in quadruplicate in respect of each works contractor, he normally deposited the money deducted as a whole and not in respect of each works contractor. This resulted in the split up

figures in respect of each works contractor becoming not readily available since they were not specified in the challans. This was the reason for the delay in determining the amount deducted and available for refund to a particular assessee. Counsel conceded that this arose from the failure of the treasury department in not bearing in mind Rule 26-A(3}(i) of the Sales Tax Rules and in not insisting on the depositor depositing the amount in separate treasury challans in respect of each works contractor.

6. It appears to us that it is for the State and those in charge of the treasury to ensure that the deposits made under Rule 26-A of the Bihar Sales Tax Rules, are made strictly in terms of that Rule and in the present context, in terms of Sub-rule 3(1) thereof. This would go a long way in avoiding delay in refunding the amount due to an assessee and prevent the running of interest in terms of Section 43 of the Bihar Finance Act, thereby leading to a saving for the Government. Similarly, a dealer entitled to refund will also be entitled to get the refund within the period fixed by the statute and without waiting indefinitely for the refund of the amount which became due to him. We are therefore satisfied that the State of Jharkhand, the officers of the Treasury and the Commercial Taxes Department should be directed to strictly enforce Rule 26-A of the Sales Tax Rules. We are also satisfied that the Commercial Taxes Department should be directed to invoke Section 25-A(6) of the Bihar Finance Act and to take appropriate proceedings against those who had deducted the tax at source and who had not deposited the same into the treasury in compliance with Rule 26-A of the Sales Tax Rules. We think that strict implementation of these provisions would go a long way in saving the Exchequer from incurring of liability for interest and would enable the department to make refunds within the time contemplated by Section 43 of the Bihar Finance Act.

7. Now coming back to the case in hand, the reason given for not refunding the amount on or before 2.12.1998, is not seen to be acceptable or justifiable. The argument of learned counsel for the petitioner that the delay was not bona fide cannot be brushed aside. On the scheme of Section 43 of the Bihar Finance Act, clearly, the petitioner is entitled to get interest on the amount refunded to him on 22.2.2003 at 9% per annum from 3.12.1998 till 22.2.2003. Since the amount refundable had already been refunded pending the writ petition, no direction in that behalf is necessary.

In the result, we allow this writ petition to the extent of directing the respondents to pay interest at 9% per annum on the amount refunded to the petitioner from 3.12.1998 till 22.2.2003 when the amount was actually refunded. We also direct the respondents to ensure that Rule 26-A of the Bihar Sales Tax Rule are strictly implemented and issue appropriate directions to the concerned treasuries in that regard. We also direct the department to take action against those who are not complying with Rule 26-A(3)(i) of the Bihar Sales Tax Rules while making deposits of the amounts deducted at source. In the circumstances, we make no order as to costs.