(2010) 04 JH CK 0065

In the Jharkhand High Court

Bharat Coking Coal Ltd. APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Jharkhand Value Added Tax Act, 2005 — Section 46

Citation : (2010) 04 JH CK 0065

Hon'ble Judges : Gyan Sudha Mishra, C.J;Rakesh Ranjan Prasad, J

Bench : Division Bench

Judgement

1. The petitioner herein had moved this Court for quashing the order by which the Bank account of the petitioner was ordered to be attached by the Respondent No. 4, Deputy Commissioner of Commercial Taxes, u/s 46 of the Jharkhand Value Added Tax, 2005. The petitioner came up with a case that the Deputy Commissioner of Commercial Taxes has passed an order attaching the Bank account of the petitioner which is a Public Sector Undertaking for non-payment of the value added tax 2005 amounting to Rs. 1,46,44,485/- which had accrued in the financial year 2007-08. The petitioner however challenged the same and submitted that the amount is disputed, and although, the respondent-authority raised a demand for a sum of Rs. 2,65,27,469/- for the financial year 2007-08, out of which the petitioner-organization has already paid a sum of Rs. 1,18,82,984/-, the respondent authority has attached the Bank account of the petitioner-organization on account of non-payment of the balance amount of Rs. 1,46,44,485/- end as this amount has already been deposited, the respondent should not have issued an order of attachment of the petitioner''s Bank account. A writ of mandamus was sought for quashing this order.

2. When the matter came up before us for consideration, it was pointed out on behalf of the respondents that there is a provision of appeal u/s 46 of the Jharkhand Value Added Tax, 2005, and it was submitted that the petitioner instead of approaching the appellate forum for adjudication of the disputed amount, has straightway approached this Court for quashing the order of

attachment.

3. This Court by order Dated 31.3.2010, therefore, granted interim protection until 21st April, 2010, in order to enable the petitioner to approach the appellate forum by filing an appeal, and it was directed to the Respondent No. 3 - Joint Commissioner of Commercial Taxes(Appeals), Dhanbad Division, Dhanbad to decide the matter expeditiously. In the mean time, it was also directed that the order for attachment of Bank account of the petitioner shall not be given effect to until 21.4.2010.

4. It is now informed by learned Counsel for the petitioner that although the appeal is still pending, the same is likely to be decided within a period of two weeks. Hence this Court should quash the attachment order issued by the Deputy Commissioner of Commercial Taxes since the disputed amount is yet to be scrutinized and adjudicated.

5. Having heard the Counsel for the parties, we have taken note of the fact that although the respondent-authorities raised a demand of Rs. 2,65,27,469/- from the petitioner-Public Sector Undertaking, at least 50 per cent of the amount as rioted hereinabove by the respondent which amounts to mora than Rs. One crore, has already been paid by the petitioner towards the value added tax for the financial year 2007-08 which is disputed by the Respondent Authorities for the said financial year. However, the Counsel for the petitioner also submitted that the dispute travels even beyond the aforesaid financial year.

6. Be that as it may, the fact remains that initially the dispute had been raised for non-payment of value added tax for more than a sum of Rs. One Crore, out of a total demand of more than Rs. Two Crores, and as the petitioner has already paid at least 50% of the amount, we see no reason as to why the Bank account should be attached, and therefore, we quash the; attachment order of the Bank account of the petitioner, on condition that the appeal be decided by the Respondent No. 3 - Joint Commissioner of Commercial Taxes (Appeals), Dhanbad Division, Dhanbaci, within a period of four weeks from the date of the order, and thereafter, if any amount is held payable by the petitioner to the Respondents by way of arrears of value added tax and the same is not paid, the Respondents shall be free to take coercive measures for realization of the amount including attachment of the Bank account.

7. The writ petition, accordingly, be treated as disposed of.

