(2014) 03 JH CK 0104

In the Jharkhand High Court

Case No : W.P. (T) No. 1254 of 2014

Central Coal Fields Ltd. APPELLANT

Vs

The State of Jharkhand RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Jharkhand Value Added Tax Act, 2005 — Section 46

Citation : (2014) 3 JLJR 327

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Binod Poddar, Sr. Adv, Advocate for the Appellant; Kumar Sunderam, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

1. The petitioner, a subsidiary of the Coal India Limited, a Government of India Enterprise engaged in the sales of Coal, has filed inter alia a writ petition seeking for quashing of the garnishee order/Bank Attachment order passed by the Deputy Commissioner of Commercial Taxes, Tenughat Circle, Phusro, Bokaro u/s 46 of the Jharkhand Value Added Tax Act, 2005 contained in Letter No. 87 dated 07.02.2014 (Annexure-7) by which the Deputy Commissioner of Commercial Tax, Tenughat Circle, Phusro, Bokaro has directed the Branch Manager, State Bank of India, Bokaro Colliery Branch, Bokaro to pay in the Government treasury a sum of Rs. 3,14,80,798.00 for the period involved in this writ petition on account of balance tax due and/or penalty imposed and interest payable under the Jharkhand Value Added Tax Act, 2005, from the Bank Account of the petitioner and also seeking for a direction to forthwith refund the amount of Rs. 6,30,00,000/- to the petitioner along with the interest thereon, which is realized by the Deputy Commissioner of Commercial Taxes, Tengughat Circle, Phusro on different dates i.e. from 30.10.2013 to 24.01.2014 by attaching the Bank Account of the petitioner, despite the interim order of stay order dated 09.03.2013 by the Commissioner of Commercial Taxes, Jharkhand, Ranchi.

2. In respect of the assessment order passed by the Assessing Officer for the assessment year 2008-09, a revision has been filed before the Commissioner, Commercial Taxes, Jharkhand, Ranchi in Revision Case No. CC(S) 161/162 of 2013 and vide order dated 09.03.2013, the Commissioner of Commercial Taxes passed the interim order, which reads as under:

Heard the learned advocate of the petitioner and the DR. The learned advocate of the petitioner Sri P.K. Lala has prayed to stay the realization of amount in dispute till the disposal of these revision petitions.

As an interim measure, the recovery of the disputed amount of tax shall remain stayed if the petitioner produces evidence of payment of 20 (twenty) percent of the involved amount in each and every case by 20.03.2013.

Put up on 23.03.2013.

3. According to the petitioner, in compliance of order of the Commissioner, Commercial Taxes dated 09.03.2013, the disputed 20% amount for the period 2008-09 comes at Rs. 1,96,96,160/- and Rs. 2,98,613/- and the same has already been realized. The grievance of the petitioner is that since, the amount (as per the interim order passed by the Commissioner, Commercial Taxes) has already been realised the Deputy Commissioner has no jurisdiction to issue the garnishee notice to put on hold the further amount as indicated in the garnishee notice dated 07.02.2014. Further grievance of the petitioner is that the Deputy Commissioner has passed the assessment order as well as the garnishee order ex-parte without affording an opportunity to the petitioner and submits that in view of violation of principles of natural justice, the writ petition is maintainable.

4. We have heard the learned Senior counsel, Mr. Binod Poddar appearing for the petitioner and Mr. Kumar Sunderam, the learned counsel appearing for the respondent-State.

5. Since, the Revision in CC(S) No. 161 of 2013 is pending before the Commissioner, Commercial Taxes, in respect of the assessment year, 2008-09 and since the competent authority is in seisin of the matter, we are not inclined to entertain this writ petition. Further more, the points raised by the petitioner appears to be only an interpretation of the impugned order passed by the Commissioner, Commercial Taxes dated 09.03.2013. Moreover, by perusal of (Annexure-5) interim order dated 09.03.2013 it is seen that the revision petition was directed to be put up for further hearing on 23.03.2013. Since, the commissioner, Commercial Taxes, is in seisin of the matter and the revision petition is pending before the Commissioner, Commercial Taxes, we are not inclined to entertain this writ petition. Accordingly, the writ petition is disposed of giving liberty to the petitioner to agitate the matter before the Commissioner of Commercial Taxes and all the issues are left open. We direct the Commissioner, Commercial Taxes to take up the matter at an early date preferably on or before 21.03.2014.