(1998) 04 PAT CK 0003

In the Patna High Court

Case No : C.W.J.C. No''s. 584 with 585, 598, 597, 599, 596, 600, 595, 594, 593, 592, 591, 590, 589, 581, 582, 583 and 586

Central Coalfields Limited — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 01-04-1998

Acts Referred:
Bihar Finance Act, 1981 — Section 42

Citation : (1998) 2 PLJR 521

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Judgement

1. The petitioner has filed these writ applications seeking appropriate direction to the Deputy Commissioner of Commercial Taxes, West Circle, Ranchi, (respondent No. 5) to refund a sum of Rs. 7,67,05.434/ (Rupees seven crores sixty seven lacs five thousand four hundred and thirtyfour only) paid by it in excess of the amount finally determined as being payable, so that it may comply with the interim order dated 19.2.1998, (annexure-5) passed by the appellate authority in appeals filed by at against the assessment orders dated 27.3.1997 (annexure-3) by depositing requisite amounts. In alternative a prayer to adjust the said amounts towards the amount payable under the new assess ment orders, which are under challenge in the appeals, has been made. Relief against taking coercive steps against the petitioner for realization of assessed taxes has also been sought for. Respondents have filed their counter-affidavits and the petitioner has also filed rejoinder affidavits in reply thereto.

2. We have heard Mr. Biren Poddar, learned counsel for the petitioner and Mrs. I. Sen Choudhary, learned S.C.I., for the respondents.

3. The admitted position is that about rupees seven crores is to be refunded by the Sales Tax Department of the State Government, to the petitioner. The Deputy Commissioner (respondent No. 5) has passed an order u/s 42 of the Bihar Finance Act (hereinafter referred to as the Act) read with rule 34 of the Rules

framed thereunder for refund of the sum of Rs. 7,67,05,434/- (Rupees seven crores sixtyseven lakhs five thousand and four hundred thirtyfour only) by adjusting it towards the amounts of sales tax which may be payable in the year 1999-2000 by the petitioner.

4. The petitioner''s grievance is that the excess amount paid by it, instead of being adjusted towards existing liability, has been directed to be adjusted in future. As the order of refund passed u/s 42 of the Act has not been challenged in these writ applications, we are not inclined to entertain the said grievance, because the relief of the nature as is claimed in these writ applications cannot be granted unless the order passed u/s 42 of the Act is set aside.

5. Learned counsel for the petitioner has sought permission of the Court for amending the writ applications so as to challenge the order u/s 42 of the Act. In this connection, the learned counsel also wanted to file an application along with an affidavit wherein the allegations have been made to the effect that the order passed u/s 42 of the Act has never been communicated to the petitioner and the officials of the Sales Tax Department are not even entertaining the application for certified copy of the said order. We are not inclined to permit the petitioner to challenge the order u/s 42 of the Act in these applications because against such order revision u/s 46 of the Act is maintainable. Learned counsel for both the parties have also admitted that against the said order, revision does lie. We have, therefore, not permitted the petitioner to file the application seeking permission to amend the writ applications. We have also not entertained the affidavits containing the allegations made against the official of Sales Tax Departments.

6. Learned counsel for the petitioner has stated that the petitioner is ready to file the revision provided the respondents give certified copy of the order passed u/s 42 of the Act to it. In this connection, it is further submitted that the respondents should not use coercive method for realizaing the existing tax liability unless the revision is decided.

7. As the remedy of revision is an efficacious and adequate remedy, we are of the considered view that the petitioner should file the revision against the order passed u/s 42 of the Act. In that revision, it will be open to it to seek the relief of the nature as is sought in these writ applications.

8. Mrs. I. Sen Choudhary, learned S.C.I, appearing for the State, has stated that the order passed u/s 42 of the Act has already been given effect to inasmuch as the amount has already been adjusted. That will not make the said order immune from challenge. It may also be ovserved that it is not always necessary to refund the excess amount in cash. It can also be adjusted. In view of the facts and circumstances of the case, these writ applications are disposed of with the following order :-

(i) The petitioner will apply, if not already applied, for the certified copy of the order passed u/s 42 of the Act within a period of ten days. The concerned authority/official shall give a certified copy of the said order within three days from the date of receipt of such application. After receipt of the certified copy, the petitioner will file the revision before the Revisional Authority within a period of two weeks thereafter. Thereafter, the revisional authority will decide it in accordance with law as expeditiously as possible preferably within a period of two months.

(ii) The petitioner is a public undertaking of the Central Government and the Sale Tax Authorites belong to the Sales Tax Department of the State Government. Normally, there should not be any conflict between them and the matter/dispute should be settled amicably.

(iii) As mentioned hereinbefore, about rupees seven crores belonging to the petitioner are lying with the Sales Tax Department which are sought to be adjusted against its tax liability for the year 1999-2000. With so much of the petitioner''s money in their hands, we do not expect that the Sales Tax authorities of the State Government will use coercive method against it for recovery of the existing tax liability which is admittedly much less than the amount belonging to the petitioner in their hands.

(iv) For the period of three months from today, no coercive steps shall be taken against the petitioner by initiating for recovery of the existing sales tax liability. In case the revision is not filed within time specified above, this order shall stand discharged.

