
(2011) 06 JH CK 0118
In the Jharkhand High Court
Case No : C.W.J.C. No. 73 of 2001

Central Coalfields Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-06-2011

Acts Referred:

Bihar Finance Act, 1981 — Section 47
Bihar Sales Tax Act, 1944 — Section 42
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 226

Citation : (2011) 3 JCR 412

Hon'ble Judges : Prakash Tatia, Acting C.J.;Jaya Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.
2. The Petitioner has prayed for quashing of the report dated 30.11.1999 (Annexure6) prepared and forwarded by the Deputy Commissioner of Commercial Taxes (Vigilance & Monitoring), Hazaribagh Division, Hazaribagh for the year 199697 to the Assessing Officer to review the assessment order dated 23.08.1999 and for quashing of the entire proceeding for review of the assessment order for the year 199697 initiated vide order dated 07.12.1999 (Annexure8) and quashing of notice dated 07.12.1999 (Annexure9) issued by Respondent No. 7 to the Petitioner for reviewing the assessment order u/s 47 of the Bihar Finance Act, 1981 and lastly for quashing of the reviewed assessment order (CST) for the year 199697 dated 12.01.2000 (Annexure10) including the demand notice No. 177 dated 27.01.2000 (Annexure10/1) issued by the Respondent No. 7.
3. The brief facts of the case are that the Petitioner is a Government of India undertaking and is a Government Company within the meaning of Section 617 of the Companies Act, 1956 and Petitioner's Piparwar Washery Project is registered

under the provisions of Bihar Finance Act, 1981 and Central Sales Tax Act, 1956.

4. The Petitioner furnished returns of sale for the year 1996/97 both under the State and Central Sales Tax and made payments, is the case of the Petitioner. The Petitioner's contention is that after fully examining and verifying books of accounts, documents and papers produced by the representative of the Petitioner and after examining the claim of the Petitioner of Rs. 46,65,02,734.65 for reduction in Gross Turn Over occurred due to quality deduction made by the respective purchasers on account of moisture, grade, slippage over loading and under loading etc. and after fully examining and verifying the joint reconciliation certificates produced by the Petitioner in support of the claim, the Respondent No. 7, the Assessing Officer, accepted the same and passed two separate orders under the State and Central Act both dated 23.08.1999 and issued demand notice under State and Central Sales Tax Act indicating that under CST a sum of Rs. 1,80,50,669 is refundable to the Petitioner being the excess payment made by the Petitioner. The Petitioner submitted application for refund of the said excess amount on 26.11.1999 in Form No. 20 u/s 42 of the Bihar Sales Tax Rules, 1983 before the competent authority who was the Joint Commissioner of the Commercial Taxes (Administration), Hazaribagh Circle, Hazaribagh. Instead of passing order for refund of the said amount, the Joint Commissioner of the Commercial Taxes under purported jurisdiction of monitoring and supervision passed the order (Annexure 6) after forming opinion that the assessment order was not passed correctly with an endorsement on the side margin of the order that the concerned Assessing Officer should take action in the light of the order passed by the Joint Commissioner of the Commercial Taxes referred above. In furtherance to the order passed by the Joint Commissioner of the Commercial Taxes, the Assessing Officer issued a notice dated 07.12.1999 (Annexure 9) to the Assessee by merely stating that to review the order u/s 47 of the Act, it is necessary to give notice to hear the Assessee therefore date has been fixed as 12.01.2000 and that in the assessment order for the year 1996/97 due to mistake the deduction of Rs. 46,65,02,774.65 has been accepted therefore, the order required to be reviewed u/s 47 of the Bihar Finance Act and the Petitioner was called upon to submit his explanation.

5. It appears that the Assessee did not appear before the Assessing Officer on the appointed date i.e. 12.01.2000 for which notice was issued only on 07.12.1999 and the Assessing Officer passed the impugned order on 12.01.2000 holding that the deduction from the Gross Turn Over of Rs. 14,05,02,784.70 was wrongly allowed and therefore raised the tax liability of Rs. 1,92,84,549.70 against the Petitioner. The Petitioner therefore, approached this Court by filing this writ petition on 09.01.2001 and the petition was admitted and Respondents have responded to the writ petition but also raised preliminary objection regarding maintainability of the writ petition as Petitioner did not avail the remedy of preferring appeal, revision and thereafter of review provided under the statute and solely on this ground the writ petition be dismissed. It has been submitted that on merit also the demand raised against the Petitioner is legal

and valid as it was a taxable amount for which no deduction could have been granted by allowing the deduction in the Gross Turn Over to the Assessee.

6. We have considered the submissions of the learned Counsel for the parties and perused the facts of the case. It is well settled and in view of the specific language used in Section 47 of the Bihar Finance Act, 1981, an order can be reviewed by the same authority only upon forming opinion that it is necessary on account of mistake which is apparent from the record necessitating the review of the order. The forming of the opinion certainly is of the officer concerned who sought to review its own order and cannot be based on the direction issued by any superior authority only. Here in this case it is clear from the order dated 07.12.1999 by which it has been decided by the Assessing Authority to initiate the proceeding u/s 47 of the Act that he did not even look into the facts of the case nor applied its mind much less to form an opinion as to satisfy himself about any mistake apparent on the record so as to require review of the assessment order passed by himself. Just contrary to satisfaction of the reviewing authority himself, it is apparent from the order passed by the Joint Commissioner of Commercial Taxes (Administration) (Annexure6) that in the proceeding for refund of the amount to the Petitioner, he examined the matter as appellate authority and recorded certain findings and issued specific direction to the Assessing Officer to review the order to remove the mistakes which have been committed by the Assessing Officer and to emphasize, in the margin of the order it has also been ordered that concerned Assessing Officer should act in accordance with the order given to him. From the order passed by the Assessing Officer reviewing its own earlier order by subsequent order dated 12.01.2000 also it is apparent that even at the time of reviewing, he merely followed the instruction by specifically recording in the order that there are instructions from the higher authority to review the order and it appears that in the line of the instructions given by the higher authority only the original order passed by the Assessing Officer was reviewed therefore even at the time of review also there is no satisfaction recorded by the reviewing authority justifying review of the earlier order.

7. Learned Counsel for the Petitioner also submitted that the Assessing Officer was fully satisfied from the material placed before him and he accepted the books of account produced by the Assessee and thereafter this question of deduction in Gross Turn Over was declared to be proved on the basis of the material placed on record whose authenticity and genuineness was never doubted therefore, this was decision given on merit on the basis of the evidence produced by the Assessee and therefore mere change in opinion and that too on the basis of the instructions and dictate of the higher authority the review was impermissible in law.

8. In view of the above reasons, even initiation of the proceeding for review itself was wrong as well as the order of the review passed consequent thereto is absolutely illegal.

9. So far as objection against maintainability of writ petition is concerned, we, after almost ten years, are not inclined to dismiss the writ petition of the Petitioner when facts are clear requiring no investigation of the disputed question of fact and the plea are based on the orders passed by the Revenue itself and without help of any of the documents of the Assessee. It is settled law that the alternative remedy is not absolute bar against entertaining the writ petition under Article 226 of the Constitution of India. In total facts of the case, we are of the view that Petitioner's writ petition is maintainable in the facts and circumstances of the case.

10. Consequently, the writ petition is allowed. The order passed by the reviewing authority dated 12.01.2000 (Annexure10) and also the demand notice dated 27.01.2000 (Annexure10/1) are quashed and set aside and it is also held that the entire proceedings for review are vitiated.