
(2015) 03 JH CK 0100
In the Jharkhand High Court
Case No : Writ Petition (T) No. 2853 of 2014

Eastern India Powertech Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Bihar Electricity Duty Act, 1948 — Section 9 A, 9-A
Constitution of India, 1950 — Article 14

Citation : (2015) 03 JH CK 0100

Hon'ble Judges : Dhirubhai Naranbhai Patel, J; Pramath Patnaik, J

Bench : Division Bench

Advocate : Ajit Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dhirubhai Naranbhai Patel, J.—This writ petition has been preferred challenging the order of reassessment dated 26th September, 2013 passed by the Dy. Commissioner, Commercial Taxes, Katras Circle, Katras, District Dhanbad. This order is at Annexure 4 to the memo of the writ petition. The Dy. Commissioner has passed this order of re-assessment for the year 2004-05 and that too without giving any notice and without any opportunity of being heard as provided under Section 6C of the Bihar Electricity Duty Act, 1948 (hereinafter to be referred to as the "Act of 1948") as quoted in paragraph 6 of the counter affidavit filed by the respondents.

2. Following submissions are made by Counsel for the petitioner:

"? Respondents have no power, jurisdiction and authority to pass the impugned reassessment order under Section 6 C of the Act of 1948 as stated in paragraph 6 of the counter affidavit, as said Section 6 C is not applicable in the State of Jharkhand because it has been added in the Act of 1948 by the Government of Bihar after bifurcation, i.e. after 15th November, 2000 and hence, the laws enacted by the Legislative Assembly of the State of Bihar are not automatically

applicable in the State of Jharkhand. This aspect of the matter has not been properly appreciated by the Dy. Commissioner of Commercial Taxes, Katras Circle, Katras, district Dhanbad while passing the impugned order.

? It is further submitted by counsel for the petitioner that as per Sub-Section 4 of Section 9 A of the Act of 1948, authority passing order of review should be the same authority, who has passed the original order. There is clear breach of this section by the respondents because the original order of assessment was passed by the Assistant Commissioner, whereas the reviewed order has been passed after approximately 7 years by the Dy. Commissioner, Commercial Taxes, Katras Circle, Katras, District Dhanbad.

? There is also breach of Sub-Rule 10 and 11 of the Rule 14 of Bihar Electricity Duty Rules, 1949(hereinafter to be referred to as "The Rules of 1949") mainly for the reason that as per Sub-Rule 10 and 11 of Rule 14, before passing the review order previous sanction in writing is to be taken from the Commissioner. In the facts of the present case the Commissioner has not given previous sanction in writing and therefore, order dated 26th September, 2013 (Annexure 4 to the memo of the petition) of the Dy. Commissioner, Commercial Taxes deserves to be quashed and set aside. Even otherwise also, the powers under Section 14(11) of the Rules of 1949 could not have been exercised by the Dy. Commissioner, Commercial Taxes because Commissioner of Commercial Taxes can give previous sanction in writing to the authority, who has passed the original order as per Subsection 4 of Section 9 A of the Act of 1948. In the facts of the present case, the original order dated 8th September, 2006 was passed by the Assistant Commissioner and therefore, no such previous sanction can be given by the Dy. Commissioner of the Commercial Taxes. It is further submitted by the counsel for the petitioner that after several years no assessment order can be passed even if there is no time limit prescribed under the Act of 1948 or under the Rules of 1949. A period of seven years is more than reasonable. No review order or reassessment order can be passed after seven years mainly for the following facts:

- (a) There is no fraud or misrepresentation on the part of the petitioner,
- (b) If there is any error, the same lies on the part of the department in applicability of the tariff
- (c) The declaration by the petitioner is absolutely true and correct.

Thus, by no stretch of imagination, after such a long lapse of time from the date of original order, i.e. 8th September, 2006, order of re-assessment or review can be passed on 26th September, 2013 and that too in gross violation of Sub section 4 of Section 9 A of the Act of 1948 and also under gross violation of Sub Rule 10 of Rule 14 of the Rules of 1949. Moreover, there is also a breach of Sub-Rule 11 of Rule 14 of the Rules of 1949. Similarly, there is also breach of Sub-Rule 9 of Rule 14 of the Rules of 1949. It is further submitted by the counsel for the petitioner that if for the year 2004-05 a higher amount is assessed towards

electricity duty after several years, this petitioner is missing the chance of deduction of this amount in the income tax. This petitioner is also losing the chance to recover this amount from the purchasers of electricity. It is further submitted by counsel for the petitioner that as the petitioner can not recover this amount from the purchaser of the electricity now, the review order/reassessment order should have been passed at the earliest even if there is no time limit prescribed by the Act of 1948 or the Rules of 1949 within a reasonable period.

3. Counsel appearing for the respondents submitted that no error has been committed by the Dy. Commissioner, Katras Circle, Katras, District Dhanbad while passing the order dated 26th September, 2013 at Annexure 4 to the memo of the petition mainly for the reason that respondents have all power, authority and jurisdiction to rectify the errors committed by the respondents in applicability of the tariff. Instead of 15 paise per unit tariff by mistake tariff at the rate of 2 paise per unit was made applicable to the petitioner. The order of assessment was passed on 8th September, 2006. Thereafter, there was audit objection by the office of the Accountant General and therefore, notice was given to this petitioner, which is at Annexure 3 to the memo of the petition, and the impugned order dated 26th September, 2013 was passed by the Dy. Commissioner of Commercial Taxes and therefore, this writ petition may not be entertained by this court. It is further submitted by the counsel for the respondents that if there is any technical error committed by the respondents the matter can be remanded by this court to the concerned respondent authorities.

Reasons:

4. Having heard counsel for both sides and looking to the facts and circumstances of the case, we, hereby, quash and set aside the order dated 26th September, 2013 (Annexure 4 to the memo of the petition) passed by the Dy. Commissioner, Commercial Taxes, Katras Circle, Katras, district Dhanbad for the following facts and reasons :

"(I) This petitioner is a company engaged in generation and distribution of electricity. The tariff applied by the respondents for the year 2004-05 was 2 paise per unit under the Act of 1948. The order of assessment was passed on 8th September, 2006. Thereafter, for several years this process continued and the order of assessment was passed by the Assistant Commissioner of Commercial Taxes. The petitioner is paying regularly the electricity duty under the Act of 1948. There is neither any misrepresentation or fraud played by this petitioner. There is no suppression of any fact, much less any material fact by this petitioner. It appears that respondents, on their own, applied a particular tariff and the electricity duty has been paid by the petitioner as per direction given by the respondents. There is no allegation by respondents of any fraud coercion, undue influence, misrepresentation etc. against the petitioner.

(II) On 26th September, 2013, Dy. Commissioner, Commercial Taxes, Katras Circle, Katras, Dhanbad has passed an order of review and has stated in the

impugned order that instead of tariff at the rate of 2 paise per unit, tariff at the rate of 15 paise per unit should have been applied. This order is patently illegal as there is a breach of sub-section 4 of Section 9-A of the Act of 1948. For ready reference Sub Section 4 of Section 9-A of the Act of 1948 is quoted hereunder:

"(4) subject to such rules as may be prescribed, any order passed under this Act or the rules made thereunder may be reviewed by the authority passing it or by its successor-in-office."

(Emphasis supplied)

In view of the aforesaid provision, review order can be passed by the very same authority who has passed the original order of assessment. In the present case, original order, dated 8th September, 2006, was passed by the Assistant Commissioner, Commercial Taxes, whereas review order was passed by the Dy. Commissioner, Commercial Taxes. This is not permissible in the eye of law.

(III) There is also breach of Rule 14(9) (10) (11) of the Rules of 1949. For ready reference, these sub rules are quoted hereunder:

"(9) Where an authority reviews under sub-section (4) of the section 9 A, an order passed by it under the Act, or these rules, it shall record its reasons in writing for doing so.

(10) Save with the previous sanction of the Commissioner recorded in writing an order, other than order passed by the Commissioner, shall not be reviewed more than 12 months after the date of passing of the order which is sought to be reviewed.

(11) No authority below the rank of Commissioner, shall review an order which has been passed by its predecessors in office, except with the previous sanction of the Commissioner."

(Emphasis supplied)

In view of Sub -Rule 10 and 11 of Rule 14 of the Rules of 1949, previous sanction of the Commissioner, Commercial Taxes is sine qua non for reassessment or review of an order of assessment. No such sanction was given by the Commissioner, Commercial Taxes in the facts of the present case and hence the respondents cannot pass an order of review or reassessment.

(IV) Assistant Commissioner, Commercial Taxes, Katras Circle, Katras, District Dhanbad has filed a detailed affidavit, which reveals full ignorance of law on the part of the said officer and it is high time for the Commissioner, Commercial Taxes to hold capacity building programmes for these type of officers. In the facts of the present case, the section which has never been enacted by the Legislative Assembly of this State or adopted by the government of this State, has been relied upon by this officer. For ready reference, para 6 of the counter affidavit filed by Mr. Manoj Kumar s/o Late Dular Chand Prasad, who is Assistant Commissioner, Commercial Taxes, Katras Circle, Katras, Dhanbad is quoted

hereunder:

"6. That it is stated and submitted that since the order dated 26.09.2013 is a reassessment order and not a review of the earlier order, the case of the Petitioner will not be covered by provisions of review as mentioned in Sub rule (10) and Sub rule (11) of Rule 14 of the Bihar Electricity Duty Rules, 1949, rather it falls under Section 6 C (1) of the Bihar Electricity Duty Act, 1948 (hereinafter referred as Act for the sake of brevity), which reads as under:

"6C. Units of energy escaping assessment.-(1) If upon information or otherwise the prescribed authority is satisfied that reasonable ground exist to believe that any units of energy of an assessee escaped assessment or any unit of energy has been under assessed or assessed at a lower rate than which was correctly applicable or deduction therefrom has been wrongly made, the prescribed authority, after giving the assessee a reasonable opportunity of being heard, reassess the assessee for such escaped units of energy..... ""

This section 6C of the Act of 1948 has been introduced by the State of Bihar after bifurcation of the State, i.e. after 15 t h November, 2000 and therefore, the same is not applicable in the State of Jharkhand. Further, the State of Jharkhand can not adopt this Section, which is enacted by the State of Bihar.

(V) It has been contended by counsel for the respondents that review order or reassessment order can be passed any time by the State authority and there is no time limit prescribed either in the Act of 1948 nor in the Rules of 1949 and therefore, order can be passed by the respondent authorities even after seven years.

This argument is devoid of any merit. Whenever a reassessment order or review order is to be passed it ought to have been passed within a reasonable time even if no time limit is prescribed by the Act or the Rule. In the facts of the present case, as stated herein above, neither there is any fraud played by the petitioner nor there is any misrepresentation. Further, there is not even suppression of facts, much less material facts. In such circumstances, order of review or reassessment should have been passed much earlier. The rate of the tariff applicable was decided by the respondents. Inadvertently, instead of tariff "A", tariff "B" has been applied. The impugned order of reassessment was passed after seven years. Now, this petitioner will have to pay higher tariff for the year 2004-05. The petitioner will neither have any chance to recover this amount from the consumers of electricity nor it will have the benefit of any deduction in income tax.

(VI) It has been held by the Hon"ble Supreme Court in the case of State of Jharkhand and Others etc. Vs. Shivam Coke Industries, Dhanbad, etc., (2011) 187 ECR 111 : (2011) 8 JT 12 : (2011) 8 SCALE 571 : (2011) 8 SCC 656 : (2011) 9 SCR 1110 : (2011) 43 VST 279 as under:

"46. We would, however, agree with the position that such a power cannot be

exercised by the revisional authority indefinitely. In our considered opinion, such extraordinary power i.e. suo motu power of initiation of revisional proceeding has to be exercised within a reasonable period of time and what is a reasonable period of time would depend on the facts and circumstances of each case. For this proposition, a number of decisions of this Court can be referred to on which reliance was placed even by the counsel appearing for the respondent.

47. In *Sulochana Chandrakant Galande v. Pune Municipal Transport* this Court dealing with the issue of "reasonable time" held as follows: (SCC p.476, para 29)

"29. In view of the above, we reach the inescapable conclusion that the revisional powers cannot be used arbitrarily at a belated stage for the reason that the order passed in revision under Section 34 of the 1976 Act, is a judicial order. What should be the reasonable time, would depend upon the facts and circumstances of each case."

48. In *Govt. of India v. Citedal Fine Pharmaceuticals* this Court held: (SCC p.487, para 6)

"6.... While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the rule is to be made, but that by itself does not render the rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be the reasonable period, would depend upon the facts of each case."

49. In *State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd.* this Court held : (SCC p.367, para 18)

"18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."

50. Now, the question that arises for our consideration is: whether the power to exercise suo-motu revisional jurisdiction by the Joint Commissioner in the present cases was exercised within a reasonable period?

51. On perusal of the records, we find that such powers have been exercised within about three years of time in some cases and in some cases soon after the expiry of three years" period. Such period during which power was exercised by the Joint Commissioner cannot be said to be unreasonable by any stretch of imagination in the facts of the present case. Three years" period cannot be said to be a very long period and therefore, in all these cases, we hold that the power was exercised within a reasonable period of time."

(Emphasis supplied)

On perusal of the above quoted judgment of the Hon"ble Apex Court, it becomes clear that if no period of limitation has been prescribed for revision, statutory

authority must exercise its jurisdiction within a reasonable period and the said reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors. Therefore, such extraordinary power i.e. suo motu power of initiation of revisional proceeding has to be exercised within a reasonable period of time and what is a reasonable period of time would depend on the facts and circumstances of each case.

5. Thus, in the facts of the present case, apparently the order of reassessment has been passed in contravention of the provisions of the Act of 1948 and the Rules of 1949, i.e. review order in question is neither passed by the same authority who has passed the original order of assessment nor it was passed with required previous sanction of the Commissioner. Further, it is not only passed beyond the reasonable period but also in absence of any allegation of fraud, misrepresentation or false declaration of facts etc. on the part of the petitioner.

6. Therefore, in view of the aforesaid facts and reasons, we, hereby, quash and set aside the order dated 26th September, 2013 (Annexure 4 to the memo of the petition) passed by the Dy. Commissioner, Commercial Taxes, Katras Circle, Katras, Dhanbad.

7. This petition is accordingly allowed and disposed of.