
(2019) 01 JH CK 0110

In the Jharkhand High Court

Case No : Writ Petition (c) No. 3318 Of 2018

Jharkhand State Mineral Development Corporation Ltd

APPELLANT

Vs

Central Coalfields Limited And Ors

RESPONDENT

Date of Decision : 03-01-2019

Acts Referred:

Income Tax Act, 1961 — Section 2(36A), 154, 206C(1), 206C(7), 206C
Companies Act, 1956 — Section 617
Constitution Of India, 1950 — Article 226

Citation : (2019) 01 JH CK 0110

Hon'ble Judges : Aniruddha Bose, CJ; B.B. Mangalmurti, J

Bench : Division Bench

Advocate : Sumeet Gadodia, Shilpi John, Ranjeet Kushwaha, Ritesh Kumar Gupta, Anoop Kumar Mehta, Amit Kumar Sinha, Rahul Lamba

Final Decision : Allowed

Judgement

Aniruddha Bose, CJ

1. The writ petitioner before us is a Government Company, wholly owned by the State of Jharkhand. One of the main activities of this Company, as submitted by Mr. Gadodia appearing for the petitioner, is to purchase coal from different public sector coal companies for resale to small and medium scale industries. In the present case, the dispute is over applicability of the provisions of Section 206C(1) of the Income Tax Act, 1961 upon the petitioner in relation to certain instances of bulk sale of coal to other units. The said provision broadly requires bulk seller of different commodities including coal to collect in addition to the price of coal a sum equivalent to one per cent thereof as Tax Collected at Source (TCS). The said sum in turn is remitted to Income Tax authorities on account of the individual buyers. The provisions of Section 206C(1) of the Act stipulate :-

"206C.

(1) Every person, being a seller shall, at the time of debiting of the amount

payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft on by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax."

Sl. No.

Nature of goods

Percentage

(i)

Alcoholic liquor for human consumption

One per cent

(ii)

Tendu Leaves

Five per cent

(iii)

Timber obtained under a forest lease

Two and one-half per cent

(iv)

Timber obtained by any mode other than under a forest lease

Two and one-half per cent

(v)

Any other forest produce not being timber or tendu leaves

Two and one-half per cent

(vi)

Scrap

One per cent

[(vii)

Minerals, being coal or lignite or iron ore

One per cent:]

2. The term "buyer" has been defined in Explanation (aa) to Section 206C of the Act in the following terms :-

"206C

[Explanation -

(a)

(aa) "buyer" with respect to -

(i) sub-section (1) means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods but does not include, -

(A) a public sector company, the Central Government, a State Government, and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State and a club; or

(B) a buyer in the retail sale of such goods purchased by him for personal consumption;

(ii)

(iii) sub-section (1F) means a person who obtains in any sale, goods of the nature specified in the said sub-section, but does not include, -

(A) the Central Government, a State Government, and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

(B) a local authority as defined in Explanation to clause (2) of section 10; or

(C) a public sector company which is engaged in the business of carrying passengers;]"

As would be evident from the aforesaid definition, a public sector company is excluded from the definition of buyer.

3. The term "public sector company" has been defined in Section 2(36A) of the Act and this definition reads :-

"2(36A) "public sector company" means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956."

Admitted position is that the entire shareholding of the writ petitioner is owned by the State of Jharkhand. Thus the writ petitioner comes within the ambit of the expression "public sector company".

4. The dispute in this writ petition arose from a letter issued by the Central Coalfields Limited (CCL), represented before us by Mr. Anoop Kumar Mehta, bearing No. CCL/M&S/CSC/TCS/6227 dated 22nd March, 2018 addressed to the General Manager (Finance) of the writ petitioner. By the said letter, the writ petitioner was informed that the Income Tax Department had collected

Rs.5,42,16,080.75 on account of TCS from CCL, which was to be paid by JSMD. No dispute has been raised before us in course of hearing about the quantification of the said sum, which, according to the writ petitioner relates to coal purchased by them from CCL for small and medium scale industries. The text of the said letter is reproduced below :-

"Please refer your letter no. 400 dt. 13.3.2018.

Income Tax Department has collected Rs.54,216,080.75 on account of TCS from CCL, which is to be paid by JSMD.

In its letter dated 06.02.2018, DCIT (TDS), Income Tax, TDS Circle, Ranchi has exempted other PSUs from paying TCS, except JSMD (copy enclosed).

You are therefore requested to clear the above dues immediately."

5. The aforesaid sum was collected by the Income Tax Department treating the CCL as a deductor in default in collection of TCS by an order passed under Section 154/206C(1)/206C(7) of the Act. As would be evident from this order, CCL had raised the point before the issuing authority, being the Deputy Commissioner of Income Tax, TDS Circle, Ranchi that the writ petitioner was a State Government undertaking but the Income Tax authorities proceeded on the basis that as the writ petitioner did not have any plant or factory, it was treated as a trader. The aforesaid order was passed in a rectification proceeding initiated by the Income Tax authorities mainly pertaining to collection of TCS.

6. Point was raised on locus of the writ petitioner to maintain this action and it was argued by Mr. Lamba, learned counsel for the Income Tax authorities that since collection was made from CCL, the writ petitioner was not entitled to institute this action. Mr. Gadodia, however, has relied on two authorities, being *I.D.L. Chemicals Ltd. Vs. Union of India and Others* [(1996) 5 SCC 373] and *Corporation Bank Vs. Saraswati Abharansala and Another* [(2009) 1 SCC 540] in support of his submission that since his client is the main victim of what he termed as "excess recovery of Income Tax", the writ petitioner had the locus to ask for refund of the sum so collected. Mr. Mehta, appearing for CCL has, in substance, supported the writ petitioner's stand that being a public sector unit, they were outside the purview of the TCS mechanism contained in Section 206C of the Act.

7. In the case of *I.D.L. Chemicals Ltd. (Supra)*, a similar situation arose in relation to Central Excises and Salt Act, 1944 (as the statute was earlier described as) in which the Steel Authority of India Limited was the collecting dealer of duty from which the individual units claimed exemption. The I.D.L. Limited was one such individual unit. When exemption was denied to Steel Authority of India Limited, the ripple effect was felt by individual units. The I.D.L. Limited approached the High Court for enforcement of the exemption notification but was unsuccessful at the first instance. The opinion of the High Court was that the proper course would have been to institute a civil suit for recovery of the sum

realized in spite of the exemption notification. The dispute travelled up to the Hon'ble Supreme Court and the Hon'ble Supreme Court held in paragraph 13 of the said report :-

"13. There is, in our view, no doubt that the reclassification of ammonium nitrate by the order of the Central Board dated November, 1980, casts upon the appellants the obligation to pay the excise duty that is leviable as a result. Such obligation does not arise merely by reason of an agreement between SAIL and the appellants but also by virtue of the provisions of Chapter X of the Central Excise Rules, 1944. The appellants suffer adverse civil consequences and have, therefore, the locus to challenge the reclassification. There is no forum other than the High Court under Article 226 where they can do so, and the High Court was in error in not entertaining the later writ petition (No.183 of 1981) and referring the appellants to a civil suit. Insofar as the earlier writ petition (No.86 of 1980) is concerned, the High Court ought, for the same reason, to have dealt with the contention of the appellants that ammonium nitrate remained exempt from excise duty by reason of the exemption notification until 21-7-1979, when ammonium nitrate was removed from the purview thereof."

The same view has been expressed by the Hon'ble Supreme Court in the later decision of Corporation Bank (*supra*). Following these authorities we hold that the writ petitioner has the locus to bring the present action.

8. Now we turn to writ petitioner's case on merit. As would be evident from the order which we have referred to in the earlier part of this judgment, the obligation to collect TCS was determined by the Income Tax authority primarily on the ground that the writ petitioner was a trader of coal. That description might fit the writ petitioner as it has no manufacturing facility and the main object of the writ petitioner so far as business of coal is concerned appears to be reselling the coal purchased to small and medium scale industries. But what the Income Tax authority failed to take into account was that there was altogether exemption of public sector units from the rigours of Sub-Section (1) of Section 206C of the Act. The obligation to collect such tax has been cast upon the buyer of specified goods and Explanation to the said provision specifically excludes any Corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956. It was urged by Mr. Gadodia that the writ petitioner was a Government company under the provisions of Section 617 of the Companies Act, 1956 and this fact has not been disputed by the Income Tax authority. Thus, the provisions of Section 206C(1) of the Act cannot apply to the writ petitioner irrespective of the fact as to whether the writ petitioner is the end user of the coal purchased or it is a trader of coal. The Income Tax authority has solely relied on the aspect that the writ petitioner was not the end-user of coal, ignoring the fact that a public sector company was kept outside the purview of the expression "buyer" as specified in Section 206C(1) of the Act. In such circumstances, we are unable to sustain the order of the Income Tax authorities in which liability to collect tax at source from

the buyer has been made applicable in the case of the writ petitioner.

9. We accordingly hold that the writ petitioner being a wholly owned company of the State of Jharkhand cannot be subjected to the provisions of Section 206C(1) of the Act to the extent the said Section covers a buyer, having regard to the Explanation (aa) to the aforesaid provision read with Section 2(36A) of the Act. We accordingly direct the Income Tax authorities to refund the sum collected on account of TCS to CCL treating the writ petitioner as buyer under the aforesaid provision and CCL in turn shall refund the said sum to the writ petitioner. For the purpose of determining the exact quantum of sum collected, the Deputy Commissioner of Income Tax, TDS Circle, Ranchi shall give a hearing to both the writ petitioner and the CCL and this quantification exercise shall be completed within a period of 10 weeks from the date of communication of this order. Learned counsel for the Income Tax authorities wanted the regular refund course to be followed in this case. We, however, do not think such a course ought to be followed as ex facie there has been collection of income tax without the authority of law in the present case and the Hon'ble Supreme Court in the case of Corporation Bank (supra) had directed refund of the amount in a proceeding arising out of a writ petition. Of course, in that decision the collection was on account of Kerela General Sales Tax Act, but we do not think so far as Income Tax Act is concerned, a different course is to be followed.

10. The writ petition stands allowed in the above terms.

11. There shall be no order as to costs.