
(2016) 01 JH CK 0158
In the Jharkhand High Court
Case No : W.P.(T) No. 245 of 2015.

M/s. Bharat Coking Coal Limited

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 JCR 393

Hon'ble Judges : D.N. Patel; Amitav K. Gupta, JJ.

Bench : Division Bench

Advocate : Darshana Poddar Mishra, Advocate, for the Appellant; Kumar Sundarum, J.C. to A.A.G, for the Respondent

Final Decision : Allowed

Judgement

D.N. Patel, J. - Counsel for the petitioner submitted that this petition is restricted for assessment order passed for the year 2010-11 by the Assessing Officer ? Assistant Commissioner of Commercial Taxes, Dhanbad Circle, Dhanbad. The said order is at Annexure 1 to the memo of this writ petition dated 06.03.2014. The petitioner is also challenging the consequential demand notice issued by the respondents which is at Annexure 2 to the memo of this writ petition. The said demand notice is dated 06.03.2014. Rest of the prayers are not pressed at this stage in this writ petition, nonetheless, liberty may be reserved with the petitioner to challenge any order of reassessment passed by the respondents in accordance with law. Counsel for the petitioner has submitted that the respondents have not appreciated the further documents which were supplied by the petitioner-assessee, which are at Annexure 8 series to the rejoinder/reply filed on behalf of the petitioner to the counter affidavit filed on 25th June, 2015 by the respondent no.4. This rejoinder affidavit filed by the petitioner is dated 1st September, 2015. Had a notice been given to the petitioner by the respondents, the petitioner would have pointed out that there is no error committed by the petitioner in giving the opening stock and the manufacturing

details and the additional production for the assessment year in question, which is 266158 Metric Tonne and in valuation (Rupees), it comes to Rs.5,60,623/-. The closing stock has already been mentioned in the documents supplied by this petitioner as 21612 Metric Tonne. In the documents at Annexure A to the supplementary counter affidavit filed on behalf of the respondents, there is some typographical error committed by the petitioner. Every typographical error cannot be encashed by the Department and, therefore, notice for the enhancement of the gross turnover is a must before adding such amount to the gross turnover and in absence of such notice, this assessment order, which is at Annexure 1 to the Memo of Writ Petition, and the consequential demand notice, which is at Annexure 2 to the Memo of Writ Petition, deserve to be quashed and set aside. Counsel for the petitioner has also submitted that against this assessment order, appeal was preferred, but, due to non-deposition of the amount which is required at 20% of the assessment, the said appeal was dismissed, nonetheless, the fact remains that without giving any notice, the gross turnover has been enhanced substantially. It has also been submitted by the counsel for the petitioner that book of accounts has not been rejected at all by the respondents. All the details of manufacturing have been stated in the book of accounts which have not been properly appreciated by the respondents while passing the order at Annexure 1 and, hence, the order at Annexure 1 and the consequential order at Annexure 2 as well as the order passed by the appellate authority which is dated 30th September, 2014, deserve to be quashed and set aside.

2. Counsel for the respondents was called upon to bring the notice if at all it is given to the petitioner before the order of assessment at Annexure 1 is passed for enhancement in the gross turnover. Counsel for the respondents-State is unable to point out the said notice given to the petitioner. Thus, it is admitted by the respondents that no notice was given to the petitioner before enhancing the gross turnover substantially as per the order at Annexure 1, nonetheless, it is submitted by the counsel for the respondents that appeal against this order was already preferred and the same has been dismissed for want of deposition of the amount. It is submitted by the counsel for the respondents that now proceedings have already been initiated for reassessment and, therefore, petitioner must participate in the reassessment proceedings.

Reasons:-

3. Having heard learned counsels for both sides and looking to the facts and circumstances of the case, we, hereby, quash and set the order of assessment, which is at Annexure 1 dated 06.03.2014 for the assessment year 2010-11 passed by the Assistant Commissioner of Commercial Taxes, Dhanbad Circle, Dhanbad as well as the consequential demand notice issued by the respondents, which is at Annexure 2 to the memo of this writ petition, which is dated 06.03.2014, mainly for the following facts and reasons: -

(i) The petitioner-assessee has supplied all the documents in a necessary format to the assessing officer for the assessment year 2010-11. The gross turnover has

also been mentioned in the book of accounts supplied by this petitioner to the respondents.

(ii) The respondents without issuing any notice to the petitioner has enhanced substantially the gross turnover. The amount enhanced in the gross turnover is at Rs.1,05,36,86,782/-. For such huge enhancement, had a notice been given by the respondents to the petitioner-assessee, they would have pointed out the documents which are at Annexure 8 series to the rejoinder affidavit filed by the petitioner dated 1st September, 2015. Looking to these documents, it appears that,

(a) There is already a reference about additional production for the assessment year 2010-11 of 266158 metric tonne of coal valued at Rs.5,60,623/-.

(b) This book of accounts has never been rejected by the respondents.

(c) Assessing Officer has not drawn his attention upon these documents and the correct production mentioned in the documents.

(iii) It appears that there is a typographical error in the document which is at Annexure A to the supplementary counter affidavit filed on behalf of the respondents which is dated 6th July, 2014. This document is known as JVAT-409 Form. By typographical mistake the additional production for the year 2010-11, which is 266158 metric tonne, has not been mentioned, otherwise, rest of the figures including opening stock, closing stock, purchases, inter-State, Intra State sale and transfers would have been mentioned correctly. It ought to have been kept in mind by the respondents-authorities that typographical error of assessee cannot be encashed by the State respondents. At least, a notice ought to have been issued by the respondents giving opportunity to the petitioner to explain the error committed by the assessee, especially, when the assessee is wholly owned by the Central Government as a Central Government Undertaking/Public Sector Undertaking. Thus, the impugned order of assessment is in violation of principles of natural justice.

4. As a cumulative effect of the aforesaid facts and reasons, we, hereby, quash and set aside the order of assessment passed by the Assistant Commissioner of Commercial Taxes, Dhanbad Circle, Dhanbad dated 06.03.2014 (Annexure 1 to the memo of writ petition) and the consequential order, which is a demand notice at Annexure 2 dated 06.03.2014, is also hereby quashed and set aside and the appellate order passed by the Joint Commissioner of Commercial Taxes (Appeals), Dhanbad Divisional, Dhanbad dated 30th September, 2014 is also hereby quashed and set aside. As the re-assessment proceedings have already been initiated by the respondents, the petitioner shall cooperate in the hearing and the reassessment will be done by the respondents in accordance with law and after giving adequate opportunity of being heard to the petitioner.

5. This writ petition is allowed and disposed of.