
(2014) 03 JH CK 0042

In the Jharkhand High Court

Case No : Writ Petition (T) No's. 1156, 1157 and 1159 of 2014

M/s. Bharat Heavy Electrical Ltd.

APPELLANT

Vs

The State of Jharkhand and others

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 7

Jharkhand Value Added Tax Act, 2005 — Section 25 46

Citation : (2014) 3 JLJR 416 : (2014) 71 VST 503

Hon'ble Judges : R. Banumathi, C.J.;Chandrashekhar, J

Bench : Division Bench

Advocate : Binod Poddar, Darshana Poddar, Piyush Poddar and Anupam Anand, for the Appellant; Rajesh Shankar, G.A., Lukesh Kumar and Kumar Sundaram, J.C., for the Respondent

Judgement

1. Since a common garnishee order dated 06.03.2014 has been issued and is under challenge in all the writ petitions, these three writ petitions are heard together.

W.P.(T) No. 1156 of 2014 (F.Y. 2008-09)

In this writ petition the petitioner initially sought quashing of the garnishee order issued by the Deputy Commissioner of Commercial Taxes, Tenughat Circle, Phusro, Bokaro u/s 46 of the Jharkhand Value Added Tax Act, 2005 contained in Memo No. 125 dated 20.02.2014 in and by which the Deputy Commissioner of Commercial Taxes has directed the Chief Engineer, Bokaro Thermal Power Station, Bokaro Thermal, District Bokaro to pay a sum of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lacs) which includes an amount of Rs. 21,21,016/- for the period involved in this writ petition i.e. for the period 2008-09 and also restraining the respondent Nos. 1 to 4 from realizing any amount from the petitioner pursuant to the above garnishee order dated 20.02.2014.

2. The petitioner is a registered dealer u/s 25 of the Jharkhand Value Added Tax

Act, 2005 and is also a registered dealer u/s 7 of the Central Sales Tax Act, 1956. The petitioner had entered into an agreement with M/s. Damodar Valley Corporation for supply of equipment and materials of Main Plant of BTPS-A-1 x 500 M.W. and also entered into another contract with Damodar Valley Corporation for rendering services of erection and commissioning of the said components which would finally constitute a power plant.

3. Earlier for the year 2008-09, the petitioner was assessed. On the basis of audit observation, the Assessing Officer initiated reassessment proceedings and for the period 2008-09 (26.11.2008 to 31.03.2009) issued the reassessment order dated 07.02.2013. Being aggrieved by and dissatisfied with the said reassessment order dated 07.02.2013, the petitioner has filed a revision petition on 22.03.2013 along with stay petition before the respondent No. 1 which is still pending.

4. The grievance of the petitioner is that even when the revision petition and also the stay petition are pending before the first respondent, the second respondent issued a garnishee order dated 29.11.2013 to respondent No. 5--State Bank of India, Bokaro Thermal Branch and realized an amount of Rs. 25,00,000/- (Rupees Twenty Five Lacs). Again the second respondent issued garnishee order dated 09.01.2014 directing the DVC/Respondent No. 6 to deposit an amount of Rs. 3,00,00,000/- (Rupees Three Crores) and the sixth respondent vide letter dated 30.01.2014 deposited the aforesaid amount of Rs. 3,00,00,000/- (Rupees Three Crores) with the Commercial Tax Department. Thus, total amount of Rs. 3,25,00,000/- (Rupees Three Crores Twenty Five Lacs) was adjusted against the disputed demands for the period 2009-10.

5. The case of the petitioner is that again the second respondent issued Memo No. 125 dated 20.02.2014 by which he had directed the Chief Engineer, Bokaro Thermal Power Station to pay a sum of Rs. 1,50,00,000/- which includes an amount of Rs. 21,21,016/- for the period involving this writ petition i.e. for the period 2008-09 on account of tax due and/or penalty imposed or interest payable under the Jharkhand Value Added Tax Act, 2005 from the bank account of the petitioner. Being aggrieved by the said garnishee order, petitioner has filed this writ petition.

W.R.(T) No. 1157 of 2014 (F.Y. 2011-12)

6. In this writ petition the petitioner initially sought quashing of the garnishee order issued by the Deputy Commissioner of Commercial Taxes, Tenughat Circle, Phusro, Bokaro u/s 46 of the Jharkhand Value Added Tax Act, 2005 contained in Memo No. 125 dated 20.02.2014 in and by which the Deputy Commissioner of Commercial Taxes has directed the Chief Engineer, Bokaro Thermal Power Station, Bokaro Thermal, District Bokaro to pay a sum of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lacs) which includes an amount of Rs. 16,24,231/- for the period involved in this writ petition i.e. for the period 2011-12 and also restraining the respondent Nos. 1 to 4 from realizing any amount from the

petitioner pursuant to the above garnishee order dated 20.02.2014.

7. On 18.12.2013 the petitioner filed first revised Annual Return for the year 2011-12 and the Respondent No. 2 issued notice No. 1610 dated 09.08.2012 fixing the date of hearing on 24.08.2012 and passed an ex-parte order rejecting the claim of ITC for Rs. 10,11,231/- for the month of June, 2011 and Rs. 6,13,000/- for the month of Feb, 2012 total being Rs. 16,24,231/-. Being aggrieved by and dissatisfied with the said reassessment order dated 24.08.2012, the petitioner has filed a revision petition on 15.01.2014 along with stay petition before the respondent No. 1 which is stated to be pending.

8. Before filling of the revision petition the second respondent issued a garnishee order dated 29.11.2013 to respondent No. 5-State Bank of India, Bokaro Thermal Branch and realized an amount of Rs. 25,00,000/- (Rupees Twenty Five Lacs). Again the second respondent issued garnishee order dated 09.01.2014 directing the DVC/Respondent No. 6 to deposit an amount of Rs. 3,00,00,000/- (Rupees Three Crores) and the sixth respondent vide letter dated 30.01.2014 deposited the aforesaid amount of Rs. 3,00,00,000/- (Rupees Three Crores) with the Commercial Tax Department. Thus, total amount of Rs. 3,25,00,000/- (Rupees Three Crores Twenty Five Lacs) was adjusted against the disputed demands for the period 2009-10.

9. The case of the petitioner is that again the second respondent issued Memo No. 125 dated 20.02.2014 by which he had directed the Chief Engineer, Bokaro Thermal Power Station to pay a sum of Rs. 1,50,00,000/- which includes an amount of Rs. 16,24,231/- for the period involving this writ petition i.e. for the period 2011-12 (From June, 2011 to February, 2012) on account of tax due and/or penalty imposed or interest payable under the Jharkhand Value Added Tax Act, 2005 from the bank account of the petitioner. Being aggrieved by the said garnishee order, petitioner has filed this writ petition.

W.P.(T) No. 1159 of 2014 (F.Y. 2009-10)

10. In this writ petition the petitioner initially sought quashing of the garnishee order issued by the Deputy Commissioner of Commercial Taxes, Tenughat Circle, Phusro, Bokaro u/s 46 of the Jharkhand Value Added Tax Act, 2005 contained in Memo No. 125 dated 20.02.2014 in and by which the Deputy Commissioner of Commercial Taxes has directed the Chief Engineer, Bokaro Thermal Power Station, Bokaro Thermal, District Bokaro to pay a sum of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lacs) which includes an amount of Rs. 1,44,26,598/- for the period involved in this writ petition i.e. for the period 2009-10 and also restraining the respondent Nos. 1 to 4 from realizing any amount from the petitioner pursuant to the above garnishee order dated 20.02.2014.

11. The Assessing Officer, after completing the assessment, passed assessment order dated 28.02.2013 and served demand notice being No. 7301 dated 28.02.2013 for the tax amount of Rs. 4,69,26,598/-. Being aggrieved by and dissatisfied with the said assessment order dated 28.02.2013, the petitioner has

filed a revision petition on 29.11.2013 along with stay petition before the respondent No. 1 which is still pending. The petitioner has also supplemented the aforesaid revision petition on 22.01.2014 by filing supplementary revision petition along with a supplementary stay petition.

12. The grievance of the petitioner is that even when the revision petition and also the stay petition are pending before the first respondent, the second respondent issued a garnishee order dated 29.11.2013 to respondent No. 5-- State Bank of India, Bokaro Thermal Branch and realized an amount of Rs. 25,00,000/- (Rupees Twenty Five Lacs). Again the second respondent issued garnishee order dated 09.01.2014 directing the DVC/Respondent No. 6 to deposit an amount of Rs. 3,00,00,000/- (Rupees Three Crores) and the sixth respondent vide letter dated 30.01.2014 deposited the aforesaid amount of Rs. 3,00,00,000/- (Rupees Three Crores) with the Commercial Tax Department. Thus, total amount of Rs. 3,25,00,000/- (Rupees Three Crores Twenty Five Lacs) was adjusted against the disputed demands for the period 2009-10.

13. The case of the petitioner is that again the second respondent issued Memo No. 125 dated 20.02.2014 by which he had directed the Chief Engineer, Bokaro Thermal Power Station to pay a sum of Rs. 1,50,00,000/- which includes an amount of Rs. 1,44,26,598/- for the period involving this writ petition i.e. for the period 2009-10 on account of tax due and/or penalty imposed or interest payable under the Jharkhand Value Added Tax Act, 2005 from the bank account of the petitioner. Being aggrieved by the said garnishee order, petitioner has filed this writ petition.

14. The petitioner has filed Interlocutory Applications being I.A. No. 1829 of 2014 in W.P.(T) No. 1156/2014, I.A. No. 1828 of 2014 in W.P.(T) No. 1157/2014 and I.A. No. 1827 of 2014 in W.P.(T) No. 1159/2014 alongwith supplementary affidavit stating that after the writ petitions were filed, a fresh garnishee order was issued by the second respondent u/s 46 of the JVAT Act, 2005 dated 06.03.2014 demanding a sum of Rs. 3,62,60,971/- for the various periods as indicated below:

15. When the matter came for hearing, we have heard Mr. B. Poddar, the learned Senior Counsel appearing for the petitioner and Mr. Rajesh Shankar, G.A. appearing along with Mr. Lukesh Kumar for the State of Jharkhand.

16. The learned Senior Counsel appearing for the petitioner submitted that even when the revision petition [in W.P.(T) No. 1157 of 2014] is pending and the writ petition has been filed, the respondents are not justified in issuing the garnishee order to DVC which is a public sector undertaking, and because of the garnishee order, the petitioner is not in a position to make day to day payment of salary, statutory liability and other legal obligations due to such coercive recovery by attachment/garnishee of the account of DVC. The learned Senior Counsel therefore submits that the garnishee order issued to DVC may be quashed or may be kept in abeyance and in the meantime, the Commissioner may be

directed to dispose of the pending revision petition.

17. The learned counsel for the State of Jharkhand Mr. Rajesh Shankar submitted that insofar as W.P.(T) No. 1156 of 2014 (F.Y. 2008-09) and W.P.(T) No. 1159 of 2014 (F.Y. 2009-10), the revision petitions filed before the Commissioner of Commercial Taxes were already disposed of and the revision petition pertaining to the financial year 2011-12 [W.P.(T) 1157 of 2014] is only pending before the Commissioner. The learned counsel further submitted that since the revision petitions have already been disposed of/one revision is pending, the writ petitions filed challenging the garnishee order are not maintainable and liable to be dismissed.

18. The learned Senior Counsel submits that the petitioner has no knowledge about the disposal of the revision petitions and disputes the revision petitions having been disposed of.

19. Challenging the impugned demand orders and also the garnishee orders, the petitioner has inter-alia raised many grounds in the writ petitions. In respect of W.P.(T) No. 1157 of 2014, it is stated by the learned counsel appearing for the respondents that the revision petition preferred by the petitioner is pending and the revision petitions in respect of W.P.(T) No. 1156 of 2014 and W.P.(T) No. 1159 of 2014 have finally been disposed of. If that is so, the petitioner would be at liberty to avail the statutory remedy as provided under the Jharkhand Value Added Tax Act, 2005. Since there is an effective statutory remedy available to the petitioner, we do not propose to go into the merits of the contentions raised by the petitioner in the writ petitions. Mr. Sumit Kumar, Senior Manager (Finance), BHEL, Bokaro Thermal Power Station is present in the Court and the learned Senior counsel on instruction submitted that the petitioner has sufficient funds with the DVC and the statement is recorded. Having regard to the submissions of the petitioner that the petitioner's source of finance is only DVC and consequent to the garnishee order issued to the DVC, the petitioner--which is a public sector undertaking is not in a position to make day to day payment of salary statutory liability and other legal obligations and keeping in view the interest of the petitioner--a public sector undertaking and also the employees, we are inclined to grant interim stay of the garnishee order on conditions stated hereunder. Accordingly the common garnishee order dated 06.03.2014 in respect of the financial year 2008-09 in W.P.(T) No. 1156 of 2014, 2011-12 in W.P.(T) No. 1157 of 2014 and 2009-10 in W.P.(T) No. 1159 of 2014 is ordered to be kept in abeyance for four months. These writ petitions are disposed of with the following observations and directions:

(i) That the petitioner shall pay Rs. 1,50,00,000/- (out of the total amount of Rs. 3,62,60,971/-) in two installments. The first installment of Rs. 75,00,000/- (Rupees seventy five lacs only) is payable on or before 31.03.2014 and second installment of Rs. 75,00,000/- (Rupees seventy five lacs only) is payable on or before 30.04.2014. The direction to pay Rs. 1,50,00,000/- is without prejudice to the contentions of the petitioner as well as the revenue.

(ii) We direct Damodar Valley Corporation to release the abovesaid installments from out of the amount payable to the petitioner--BHEL to the respondent no. 2-- Deputy Commissioner of Commercial Taxes, Tenughat Circle, Tenughat, PO & PS Phusro, District Bokaro within the time schedule as indicated above.

(iii) It is further directed that the petitioner shall pursue the revision petition and as stated by the learned Senior Counsel, the petitioner shall not take any adjournment and shall cooperate in the pending revision proceeding.

(iv) The Commissioner of Commercial Taxes shall consider the revision petition and dispose of the same after affording sufficient opportunity of hearing, at an early date, preferably within a period of 3 months from the date of receipt of the copy of this order.

(v) Insofar as the revision petition for the financial year 2008-09 and 2009-10 which are said to have been disposed of by the Commissioner, Commercial Taxes, the petitioner to work out the statutory remedy available to it in accordance with law within four weeks from today by filing necessary application before the competent authority seeking appropriate relief.