(2008) 03 PAT CK 0072

In the Patna High Court

Case No : CWJC No''s. 1249 and 1403 of 2008

M/s Bharat Sanchar Nigam Ltd. APPELLANT

Vs

The Union of India and Others RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Citation : (2008) 3 PLJR 116

Hon'ble Judges : Barin Ghosh, J;Abhijit Sinha, J

Bench : Division Bench

Advocate : L.N. Rastogi and Alok Kumar Shahi, for the Appellant; Rakesh Kumar Singh, for the Respondent

Judgement

1. Since both these writ petitions raise similar questions of law on almost identical facts, they have been heard together and are being disposed of by this common order. In this case an adjudication of the liability to pay service tax has been made. In order to recover the adjudicated defaulted amount of since tax, a notice has been issued to the writ petitioner stating therein that in default of payment of the amount, its Bank account and other properties will be attached.

2. Being aggrieved by the order of adjudication, the petitioner has filed appeals before the appropriate authority and has also filed applications for stay of enforcement of the adjudication before the appellate authority. Those are pending.

3. Inasmuch as the petitioner is a Central Government Company within the meaning of the Companies Act, 1956 and inasmuch as it is a Central Government tax which, according to the adjudicating authority, has not been paid by the petitioner, the petitioner has approached High Power Committee in order to sort out the matter.

4. The learned counsel for the petitioner relied upon a judgment of a learned Single Judge rendered in the case of Bongaigaon Refinery and Petro Chemicals Ltd. vs. Commissioner of Income Tax and Others, reported in 2002 256 ITR 699.

In this case while dealing with a writ petition challenging a demand of Income Tax, the Court did not interfere with the demand, but permitted the writ petitioner to prefer an appeal and white doing so passed an order directing that recovery of the disputed tax amount shall not be made until orders are passed by the appellate authority on the application for stay of the demand.

5. The learned counsel also relied upon a judgment of the Division Bench of this court rendered in CWJC No. 3358 of 2007 on 26.3.2007 whereby and under the Court while permitting preferring of an appeal against an Income Tax demand made the orders and directions for attachment of the Bank Account of the petitioner for realization of the disputed but adjudicated Income Tax dues of the petitioner inoperative.

6. The learned counsel submitted that in view of said orders, this Court shall also prevent the adjudicating authority to take steps to recover the adjudicated but disputed service tax allegedly payable by the petitioner.

7. The learned counsel for the petitioner also cited a judgment of the Hon''ble Supreme Court rendered in the case of Mahanagar Telephone Nigam Ltd. Vs. Chairman, Central Board, Direct Taxes and Another, , whereby and under it was held that inasmuch the dispute inter se the parties pending adjudication before the appellate authority was also pending before the High Power Committee and the Committee had not given clearance to the appellant, the appellant could not proceed with the appeal.

8. In those circumstances it was submitted that at least until such time the High Power Committee decides the matter pending before it, this Court would protect the petitioner from the threatened coercive actions for recovery of the adjudicated but disputed service tax.

9. The learned counsel for the respondents submitted that by reason of the change in law, at present it is only the appellate authority, which is the final authority insofar as these cases are concerned. He, therefore, sought to insinuate that the High Power Committee has no role to play.

10. Preferring of an appeal is not an automatic stay of the order appealed against. Unless the order appealed against is stayed, the order, though appealed against, is an enforceable order and the same can be enforced in the manner the Jaw has authorized enforcement thereof.

11. In the judgment of the Guahati High Court, referred to above, as well as in the judgment of this Court, referred to above, the Courts did not pronounce anything contrary to what has been stated above, but in the facts and circumstances of the case as were before them, they ordered in the manner as had been ordered by them. In those cases no appeals were pending. In the instant cases, appeals are pending. Inasmuch as the order of adjudication has not been stayed by the appellate authority, it would not, therefore, be appropriate on our part to direct stay of the operation of the orders, which prayer

is pending consideration by the authority entitled to consider the same in accordance with its merits.

12. The purpose and object of approaching the High Power Committee is totally different. The purpose of approaching the High Power Committee is to avoid litigation inter se Government agencies so as to save time of overburdened Courts and Tribunals. The writ petitioner has approached the High Power Committee and the High Power Committee has entertained such approach. In view of the judgment of the Hon''ble Supreme Court, referred to above, the petitioner without the clearance of the High Power Committee cannot proceed with the merits of the appeals pending before the appellate authority. However, that does not preclude the petitioner from approaching the appellate authority for obtaining stay of the impugned adjudications on its pending applications.

13. The petitioner at the same time may also approach the High Power Committee so as to advise the authority entitled to enforce the adjudication orders not to enforce the same.

14. We make it absolutely clear that in dealing with the subject matter of the writ petitions, we had no scope of going into the merits of the adjudication inasmuch as the appeals against the adjudications are pending, but it appears to be the contention of the petitioner that in one case, though not entitled to, taxable liability has been assessed on the whole turnover and deposit of tax made by the petitioner on a particular date or dates has not been taken into account and in the other case the adjudication has been made on double of the amount of the turnover. With the above observations, the writ petitions are disposed of.