
(2012) 08 JH CK 0134

In the Jharkhand High Court

Case No : Writ Petition (T) No. 4431 of 2012

M/s. Bihar Sponge Iron Ltd.

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Citation : (2012) 4 JCR 462

Hon'ble Judges : Prakash Tatia, J;Jaya Roy, J

Bench : Division Bench

Advocate : M.S. Mittal, for the Appellant; Rajesh Shankar, G.A., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. Learned counsel for the petitioner submitted that the petitioner has preferred appeal before the Joint Commissioner of Commercial Taxes (Appeals), Jamshedpur Division, Jamshedpur on 22.06.2011.

2. It appears that the said appeal was registered on 25.07.2011 and admitted. On that day, no interim order was passed by the appellate authority nor there is any prayer for any interim ex-parte order. Thereafter the matter was adjourned to 16.09.2011, 05.12.2011, 06.03.2012, 24.04.2012 and 08.05.2012 and thereafter the date fixed was 19.07.2012.

3. According to learned counsel for the petitioner, since 01.06.2012 the office of the appellate authority is vacant and the respondent department is pressing hard for the recovery of the amount. It is submitted that since there is no appellate authority and, therefore, the petitioner cannot obtain any interim order, much less seeking final decision of the appeal. In view of the above, it has been prayed that till any appellate authority starts functioning, the recovery proceeding may be stayed. Learned counsel for the petitioner submitted that in number of cases where appellate authorities were not there, this Court granted interim relief till

the appellate authority joined.

4. We have considered the application for interim relief. Such relief, as prayed by the petitioner, depends upon the facts of the case. In this case, admittedly the appeal was filed in the month of June, 2011 and appeal was registered on 25.07.2011 and on that day no prayer for interim relief was made by the writ petitioner, as is apparent from the order-sheet placed on record. Then on the next date, the counsel was present and matter was heard partly. On that date also, when the matter was adjourned from 16.09.2011 to 05.12.2011, for a long period of more than two months, no prayer was made for interim relief and, thereafter, according to learned counsel for the petitioner, the office of the appellate authority remained vacant from 01.03.2012 to 24.04.2012 i.e. more than one month and thereafter from 25.04.2012 to 31.05.2012 the appellate authority was very much there and the petitioner appeared but at that time also no prayer for interim order was made. According to learned counsel for the petitioner, the petitioner requested for interim relief, however, that is not in the order dated 24.04.2012.

5. Be that as it may, the officer was to retire on 31.05.2012 and there were ample time for the writ petitioner to obtain the interim order from the appellate authority but it appears that the appellate authority did not grant the relief.

6. It will be worthwhile to mention here that in the same proceeding but, according to learned counsel for the petitioner, for other issue, the petitioner approached this Court by filing writ petition being W.P. (T) No. 2954 of 2012 which was withdrawn on 22.02.2011 for preferring appeal.

7. Looking into the totality of the facts of the case, we are of the view that the petitioner had sufficient time to obtain interim order from the appellate authority and now appellant wants to take advantage of the absence of the appellate authority and that too, who vacated the seat from 01.06.2012 only. We are of the considered opinion that it is not a fit case for entertaining by this Court hence, this writ petition is dismissed.

8. Learned counsel for the petitioner seeks liberty to approach superior authority who can pass interim order if cannot decide the appeal finally and to request him to hear the appeal finally and to pass any order if he cannot hear the appeal finally. So far as interim relief is concerned, if law permits, the petitioner may avail such procedure.