(2013) 11 JH CK 0007

In the Jharkhand High Court

Case No : Writ Petition (T) No''s. 3539, 3540, 3585, 3678 and 4712 of 2012

M/s Central Coalfields Limited APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2014) 1 JLJR 92

Hon'ble Judges : R. Banumathi, C.J;Aparesh Kr. Singh, J

Bench : Division Bench

Advocate : Anoop Kumar Mehta, for the Appellant; Rajesh Shankar, Lukess Kumar, Dheeraj Kumar for the State and Mr. Arwind Kumar for Respondent Nos. 2 and 3, for the Respondent

Judgement

1. Heard learned counsel for the parties. In these batch of five writ petitions prayer sought for by the petitioner is similar in nature, therefore with the consent of learned counsel for the petitioner as well as learned counsel appearing on behalf of the respondents, all the writ petitions are taken up together and stands disposed of by this common judgment.

2. In the instant writ petitions, petitioner-company seeks refund of the professional tax amount collected from different areas under Central Coalfields Limited by the Hazaribagh Mines Board. The details of the professional taxes sought to be refunded in the writ petitions are given below:--

3. The above professional taxes have been imposed by virtue of Hazaribagh Mines Board Profession Tax Bye-Laws, 2003 by the State Government. The validity of the Hazaribagh Mines Board Profession Tax Bye-Laws, 2003 was challenged in this Court in the case of Coal Mines Officers'' Association of India Vs. State and Others, The Hazaribagh Mines Board Profession Tax Bye-Laws, 2003 was struck down by the Division Bench of this Court in the decision reported in the case of Coal Mines Officers Association of India vs. State of Jharkhand and Others and analogous cases. While striking down the Hazaribagh Mines Board Profession Tax Bye-Laws, 2003 in para 13 the Division Bench has

considered the question of refund of the taxes collected from the Central Coalfields Limited. The Division Bench has held in para 13 as under:--

Para 13. From the aforesaid fact, it will be evident that because of the notification issued by the State of Jharkhand dated 29th May, 2003 framing Bye-laws, 2003 and the intimation given to M/s. CCL, the professional tax was collected by M/s. CCL.

It is not in dispute that Hazaribagh Mines Board is a creature of the State Government, created under Hazaribagh Mines Board Act. It is the State Government, which has made provision under the said Act to generate fund. As per the said Act, the State Government is to release grant in favour of Hazaribagh Mines Board for its survival. Thus, according to us, it will be the liability of the State Government to pay back and refund the professional tax already collected from one or other petitioner in favour of Hazaribagh Mines Board, Hazaribagh.

The respondent-State of Jharkhand is, accordingly, directed to refund the amount of professional tax, as may have been collected from one or other petitioner, immediately.

Concerned petitioner(s) may claim for such refund from the concerned department of the State of Jharkhand, enclosing a copy of the relevant evidence in support of payment of professional tax already made by such petitioner(s). The respondent-State of Jharkhand, if so required, may make appropriate verification from M/s. CCL and will refund the admitted amount. All the writ petitions are allowed, with the aforesaid observations and directions.

However, in the facts and circumstances, there shall be no order as to costs.

4. By considering the question of refund of the amount of professional tax the Division Bench has clearly held that concerned petitioner(s) may claim for such refund from concerned department of State of Jharkhand enclosing the copy of relevant evidence in support of payment of professional tax already made by the petitioner(s). The respondent-State of Jharkhand was required to make appropriate verification from M/s. CCL and will refund the admitted amount.

5. The prayer made in all these writ petitions filed by M/s. CCL seeking for refund of the professional taxes said to have been paid by the M/s. CCL to the Hazaribagh Mines Board is not in accordance with the direction issued by the Division Bench. As per the decision of the Division Bench only the concerned petitioner(s) may claim for such refund from the concerned department of the State of Jharkhand enclosing the copy of the evidence in support of payment of professional Tax already paid by such petitioner(s).

6. Learned counsel for the petitioner Mr. A.K. Mehta submitted that M/s. CCL has only paid the professional taxes on behalf of several coal consumers being Bokaro Steel Plant, Durgapur Steel Plant, Bhilai Steel Plant, Rourkela Steel Plant under the Steel Authority of India Ltd., Vizag , Indian Iron and Steel Company,

Damodar Valley Corporation and some other consumers. Learned counsel for the petitioner further submits that those consumers did not pay professional tax saying that they are not liable to pay the same and M/s. CCL cannot levy and realize different amounts from different areas. As the professional tax are paid by M/s. CCL itself, therefore, petitioner is entitled to maintain the writ petitions seeking refund of professional taxes on behalf of coal consumers.

7. On the other hand, learned counsel for the respondent-Board has submitted that petitioner-M/s. CCL is not aggrieved party and cannot seek refund of the professional tax said to have been paid by the petitioner itself.

8. The question (i) whether M/s. CCL has actually paid the professional tax on behalf of the coal consumers and whether the coal consumers have paid the same; (ii) whether the professional tax is refundable to the coal consumer; (iii) the exact amount of professional tax paid by M/s. CCL and such other questions of facts cannot be gone into exercising the writ jurisdiction under Article 226 of the Constitution of India, Since, the disputed question of facts are involved, the writ petitions cannot be entertained by this Court. Accordingly, all these writ petitions are disposed of with a liberty to the petitioner to approach the Civil Court in accordance with law to seek remedy in accordance with law.