(2016) 04 JH CK 0133

In the Jharkhand High Court

Case No : W.P.(T) No.643 of 2016 with I.A Nos. 1604 of 2016 and 2254 of 2016

M/s Hindustan Steelworks Construction Limited — APPELLANT

Vs

State of Jharkhand — RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Jharkhand Value Added Tax Act, 2005 — Section 46

Citation : (2017) 1 AIRJharR 759 : (2016) 3 JBCJ 182 : (2016) 3 JCR 199

Hon'ble Judges : Virender Singh, C.J. and Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : M/s. P.S. Patwalia, Additional Solicitor General, R.S. Muzumdar, Senior Advocate, Kumar Vaibhav, Advocate, for the Appellant; Mr. Rajesh Shankar, GA and Mr. S. Srivastava, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Virender Singh, C.J.—Heard learned counsel for the parties.

2. Aggrieved of order dated 22.12.2015 passed by the Deputy Commissioner, Commercial Taxes, Bokaro Circle whereby, M/s SAIL/Bokaro Steel Plant has been directed to withhold payment to the petitioner-company, the present writ petition has been filed.

3. Mr. P.S. Patwalia, the learned Additional Solicitor General of India joined issue with regard to the impugned order dated 22.12.2015 viz-a-viz jurisdiction of the Assessing Authority to issue a direction for with-holding payment to the petitioner-company. Contending that the proceeding before the Assessing Authority is not complete till date and the liability of the petitioner-company, if any, has yet not been determined, it is submitted that the direction contained in the impugned order dated 22.12.2015 could not have been issued. The learned ASGI further submits that no notice as contemplated under Section 46 of the Jharkhand Value Added Tax Act, 2005 has been issued to the petitioner-company and, in fact, the impugned order dated 22.12.2015 cannot be passed in exercise

of powers under Section 46 (1)(b) r/w Section 46(4) of the Act of 2005.

4. On the other hand, Mr. Rajesh Shankar, the learned G.A. submits that the proceeding was initiated at the instance of R&P Constructions and other sub-contractors who alleged that the petitioner-company though deducted tax at source (VAT) from sub-contractors however, it has not issued Form-JVAT 400 to them. However, Mr. Shankar does not deny that the petitioner has already deposited a sum of Rs.63,21,807/- in two instalments which is the amount for which the petitioner -company has allegedly not issued Form-JVAT 400.

5. Mr. Indrajit Sinha, the learned counsel appearing for the respondent-Steel Authority of India Limited admits that the works-contract has been entered between the petitioner and the Bokaro Steel Plant and payment is made to the petitioner-company who is the contractor of Bokaro Steel Plant. Referring to paragraph Nos. 13 and 14 of the counter-affidavit filed on behalf of the respondent-SAIL, the learned counsel submits that all tax deductions at source are made by the Bokaro Steel Plant and TDS certificate has already been issued by the Bokaro Steel Plant for the same.

6. Considering the aforesaid facts, we are of the opinion that prima facie, the impugned order appears to be unsustainable.

7. At this stage, faced with the above situation, Mr. Rajesh Shankar, the learned G.A. fairly concedes that since the petitioner has already deposited Rs.63,21,807/-, may be under protest and without prejudice to its rights, the impugned order dated 22.12.2015 has lost its significance for the present.

8. Mr. Patwalia, the learned ASGI, states that this satisfies the petitioner, for the present, subject to liberty to the petitioner to raise all objections before the Assessing Authority including, the jurisdiction of the Assessing Authority.

9. In view of the aforesaid facts and the changed circumstance where under, the disputed amount stands deposited by the petitioner-company, the instant writ petition stands disposed of with a direction to the respondent no.3 to withdraw the impugned order dated 22.12.2015. However, in view of the pending proceeding before the Assessing Authority, the question of jurisdiction is left open and a liberty is reserved with the petitioner to raise all objections as available in law to it.

10. I.A. Nos. 1604/2016 and 2254/2016 also stand disposed of accordingly.

11. Notice issued to respondent Nos. 7 to 36 vide order dated 29.02.2016 stands discharged.