(2012) 05 JH CK 0054

In the Jharkhand High Court

Case No : Writ Petition (T) No. 1006 of 2010

M/s MECON Limited — APPELLANT

Vs

The State of Jharkhand and Others — RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:
Bihar Finance Act, 1981 — Section 17(3)

Citation : (2012) 3 JCR 685 : (2012) 3 JLJR 76 : (2013) 57 VST 206

Hon'ble Judges : Prakash Tatia, C.J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Biren Poddar, Darshana Poddar, Piyush Poddar and Amrita Sinha, for the Appellant; Rajesh Shankar, S.C. I, for the Respondent

Judgement

1. Heard learned counsel for the parties. The petitioner is aggrieved against the assessment order dated 25.01.2007 (Annexure-5), which is for the year 2002-03 passed u/s 17 (3) of the Bihar Finance Act, 1981 by the Deputy Commissioner of Commercial Taxes, Bokaro Circle, Bokaro. By this order, the petitioner has been imposed tax to the tune of Rs. 39,83,019.32 against admitted tax liability of Rs. 2,20,474 on account of additional tax including surcharge and imposed tax on turnover of Rs. 1,98,34,946 relating to the works contracts executed by sub-contractors and also imposed tax on tax-paid sale of Rs. 2,00,43,101.

2. According to learned counsel for the petitioner order dated 25.1.2007 is an anti-dated order and it was passed without giving an opportunity of hearing to the assessee. It is also submitted that the petitioner is a Government of India Undertaking and his representative was continuously appearing before the assessing officer and lastly he was asked to appear on 2.05.2005, which is apparent from the order-sheet dated 21st March, 2005 and which was duly counter-signed by the representative of the writ petitioner. However, on 2.05.2005, neither the case of the petitioner was taken up nor any fresh date was communicated to the writ petitioner and the matter was taken after about six months on 21.11.2005. From 21.11.2005 several dates were given and on

that dates, it was ordered that fresh notice be issued to the assessee but no notice was issued to the assessee. Not only this, in supplementary counter affidavit filed by the respondents, this fact has been specifically admitted by the respondents that after 21st March, 2005 and onwards no notice was given to the petitioner by the assessing officer. It is submitted that not only this but even after purported making assessment on 25.1.2007, as alleged by the assessing officer, no demand notice was served upon the petitioner for more than two and half years. It is further submitted that the assessment order was passed definitely anti-dated and this finds support from the fact that in the margin of the order-sheet dated 25.01.2007 it is mentioned that a demand notice was also dispatched on 31.01.2007. This fact is contrary to the respondents own document, i.e., demand notice (Annexure-3) dated 31.01.2007 which has been served upon the assessee, which is a public sector undertakings, on 26.10.2009. Therefore, according to learned counsel for the petitioner all the facts are available for drawing an inference that all the order-sheets, after 21st March, 2005 have been drawn in one day and all the proceedings are anti-dated.

Learned counsel for the petitioner relied upon the judgment delivered in the case of State of Andhra Pradesh vs. M. Ramakishtaiah & Ors reported in (1994) 93 STC 406 (SC).

3. Learned counsel for the respondent-department admitted that it is true that on record there is no material to show that any notice was issued to the assessee after 2.05.2005. However, according to learned counsel for the respondents, the petitioner''s representative himself used to appear before the authority and on subsequent dates he did not appear. Therefore, there was no necessity to serve notice upon the assessee. It is further submitted that no inference can be drawn that the order is anti-dated order.

4. We considered the submissions of learned counsel for the parties and perused the record; including order-sheets, copies of which have been placed on record as Annexure-4, and demand notice-Annexure 3 dated 31st January, 2007. It is clear from the above documents that the representative of the assessee used to appear before the assessing officer regularly and lastly he appeared on 2nd May, 2005 and put his signature in the margin of the order-sheet evidencing his attendance before the assessing officer. On 2nd May, 2005, the Assessing Officer fixed the next date on 21st May, 2005. On 21st May, 2005, the matter was not taken up and it was taken up after six months, on 21.11.2005 and thereafter, several dates were given and in order-sheets it was clearly mentioned that fresh notice be issued to assessee obviously because of the reason that on date fixed for the proceeding on 21st May, 2005 the matter was not taken up. In view of the statement made in counter, it is clear that no notice was ever issued to the assessee communicating the date of proceedings after 21st May, 2005. Therefore, the impugned order dated 21st January, 2007 was passed without affording opportunity of hearing to the assessee and has been passed without any knowledge of the assessee and hence, liable to set aside on this ground.

5. So far contention of learned counsel for the petitioner-assessee that the entire order-sheet from 21st November, 2005 till the assessment order was passed are anti-dated order-sheets is concerned, we are of the considered opinion that this apprehension cannot be ruled out in view of the fact that the assessment order purported to has been passed on 25.1.2007, without opportunity of hearing to assessee, only six days before the expiry of the period of limitation for making the assessment order and making an endorsement in the margin of the sheet dated 25.01.2007 of dispatch of demand notice on 31st January, 2007 but non service of such demand notice upon assessee, who is a public sector undertaking, upon which assessment order and demand notice could have been served in days time only and was served upon the assessee after delay of two and half years i.e., 26th October, 2009 when the petitioner is a public sector undertaking and having its office at Ranchi and is not avoiding the assessment proceeding. In view of above reasons and making an assessment in violation of principles of natural justice by purported order dated 25th January, 2007, the assessment order deserves to be set aside and hence set aside. Consequently, demand notice against the petitioner is also set aside.

6. Since, the order dated 25.1.2007 and demand notice is set aside, then any amount recovered from the petitioner in pursuance of the demand notice against tax liability be refunded to the writ petitioner along with statutory interest. Learned counsel for the respondents submitted the respondents may be permitted to initiate fresh proceedings.

The respondents may proceed accordingly, if law permits.

