(2016) 04 JH CK 0120

In the Jharkhand High Court

Case No : W.P (T) No. 44 of 2016 With I.A No. 2285 of 2016

M/s. R & P Construction APPELLANT

Vs

M/s Hindustan Steelworks Construction Limited RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Jharkhand Value Added Tax Act, 2005 — Section 44
Jharkhand Value Added Tax Rules, 2006 — Rule 23

Citation : (2016) 4 AIRJharR 212 : (2017) 1 JBCJ 688 : (2016) 3 JCR 207 : (2016) 3 JLJR 124

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

Bench : Division Bench

Advocate : Mr. Rahul Saboo, Advocate, for the Appellant; Mr. P.S. Patwalia, ASGI, Mr. R.S.Mazumdar, Sr. Advocate, Mr. Kumar Vaibhav, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

1. The petitioner-firm is registered with the Commercial Taxes Department as a dealer and it has been issued Tax Identification Number (TIN) 20741400967 under Jharkhand Value Added Tax Act, 2005. The petitioner-firm has been awarded contract for execution of various civil works at Bokaro Steel Plant, B.S. City. The petitioner is a sub-contractor under M/s Hindustan Steel Works Construction Limited who is the principal contractor. The grievance of the petitioner is that M/s Hindustan Steel Works Construction Limited made payment to the petitioner after deducting VAT at source however, it has not issued certificate of tax recovery at source in Form-JVAT 400 in favour of the petitioner-firm.

2. Mr. Rahul Saboo, the learned counsel for the petitioner submits that under the Jharkhand Value Added Tax Act, 2005, the petitioner is a contractor whereas, M/s Hindustan Steel Works Construction Limited is the contractee and in terms of Section 44 of JVAT Act, 2005 r/w Rule 23 of the JVAT Rules, 2006, the contractee

is liable for deduction of tax at source of advance tax which M/s Hindustan Steel Works Limited has already deducted from the running bills of the petitioner-firm and therefore, the respondent-M/s Hindustan Steel Works Construction Limited is under a statutory duty to issue Form-JVAT 400 in favour of the petitioner-firm.

3. Per contra, Mr. P.S. Patwalia, the learned Additional Solicitor General of India for the respondent-M/s Hindustan Steel Works Construction Limited refers to Rule 2(iii) of JVAT Rules, 2006 and submits that it is Bokaro Steel Plant which is the contractee for the purpose of 2005 Act and not M/s Hindustan Steel Works Construction Limited and in fact, the principal employer namely, Bokaro Steel Plant has been deducting TDS from the bills raised by M/s Hindustan Steel Works Construction Limited and the same has been deposited with the Commercial Tax Department which has issued TDS certificate to the company. Seriously, challenging the maintainability of the writ petition, Mr. Patwalia, the learned ASGI submits that except, a self-prepared statement of accounts vide Annexure-2, the petitioner has not produced even a chit of paper in support of the claim made by it.

4. At the outset, we may notice that the writ petition is bereft of foundational facts for seeking Mandamus to the respondent-M/s Hindustan Steel Works Construction Limited to issue Form-JVAT 400 to the petitioner-firm. The petitioner has failed to produce a document which would disclose deduction on account of VAT for the works contract by M/s Hindustan Steel Works Construction Limited, for which the respondent-M/s Hindustan Steel Works Construction Limited is under a duty to issue certificate in Form-JVAT 400. Reliance placed by the petitioner on a clause in the Letter of Intent which provides that the rates are inclusive of sales tax and tax on works contract and if applicable, sales tax/tax at works contract @ 2% would be deducted and TDS for the same would be issued in due course, is also misconceived. The petitioner has itself admitted that it has been assessed for Financial Years 2007-08, 2008-09, 2009-10 and 2010-11 and demand notices have been issued to it by the Commercial Taxes Department and challenging the assessment orders the petitioner moved in Revision before the Commissioner of Commercial Taxes, Government of Jharkhand and the matter has been remitted back to the Assessing Authority for a fresh assessment after affording opportunity of hearing to the petitioner. Whether any amount has been deducted by M/s Hindustan Steel Works Construction Limited from the payments made to the petitioner for which it is under a statutory duty to issue Form-JVAT 400 or not is a question of fact which cannot be ascertained in the present proceeding. The petitioner kept quiet for long 7 years and did not raise a grievance for non-issuance of Form-JVAT 400. If at all, it is found that tax deduction at source has been done from the running bills of the petitioner still, the petitioner has failed to establish that the respondent- M/s Hindustan Steel Works Construction Limited is under a legal duty to issue the said certificate. In fact, pursuant to order of the Commissioner of Commercial Taxes Department, pending assessment of the petitioner-firm by the Assessing Authority, the present writ petition appears to be pre-mature also. Moreover, in view of order

passed in W.P(T) No. 643 of 2016, the prayer of the petitioner cannot be granted. The dispute raised by the petitioner can be adjudicated by the Assessing Authority upon production of evidence by the petitioner.

5. Accordingly, we decline to interfere in the matter and consequently, the writ petition stands disposed of with liberty to the petitioner to avail remedy under the Jharkhand Value Added Tax Act, 2005. I.A. No. 2285 of 2016 stands dismissed.

