**(2021) 04 JH CK 0068**

**In the Jharkhand High Court**

**Case No :** Writ Petition(T) No. 4377 Of 2020

M/s Rudra Constructions, Hazaribag APPELLANT

Vs

State of Jharkhand And Ors RESPONDENT

**Date of Decision :** 08-04-2021

**Acts Referred:**
Jharkhand Value Added Tax Act, 2005 — Section 46, 55(4)

**Citation :** (2021) 04 JH CK 0068

**Hon'ble Judges :** Aparesh Kumar Singh, J;Anubha Rawat Choudhary, J

**Bench :** Division Bench

**Advocate :** Sumeet Gadodia, Prabhat Kr. Sinha, Ashok Kumar Yadav

## Judgement

The writ petition relates to a challenge to the order dated 6 th

December 2019 passed by the learned Additional Commissioner of Commercial Taxes, Jharkhand in Suo Moto Revision Case Nos. CC(S)- 206/2015 and CC(S)-207/2015 for the period 2009-10 and 2010-11 respectively under the JVAT Act, 2005 whereby it has confirmed the order of the Deputy Commissioner, Commercial Taxes, Hazaribag Circle, Hazaribag dated 29.09.2014 (Annexure-3 and 3/1). Annexure-3 and 3/1 were passed after show-cause notice to the petitioner upon an audit objection. A differential rate of tax @ 12.5% instead of 4% has been levied along with interest under Section 55(4) of JVAT Act, 2005. Thereafter, recovery through special mode has been undertaken by issuance of garnishee notice bearing memo no. 429 dated 6th November 2020 under Section 46 of the JVAT Act, 2005 on the petitioner's banker namely State Bank of India, Main Branch, Hazaribag directing it to remit an amount of Rs.22,15,961.00 in the account of the respondent. Counter affidavit and rejoinder affidavit have been filed.

Learned counsel for the petitioner, however, seeks to confine his challenge to the garnishee notice dated 6th November 2020 (Annexure-5) as petitioner has already preferred a revision petition before the Commercial Taxes Tribunal, Jharkhand along with his stay petition as per the receipt enclosed as Annexure-6 in respect of both the orders. Learned counsel for the petitioner submits that the petitioner had to approach this Court on account of issuance of the garnishee notice in the meantime since the Commercial Taxes Tribunal is non-functional. He submits that for the present the challenge is confined to the garnishee notice since the Commercial Taxes Tribunal is likely to become functional within a matter of weeks. The present matter relates to the garnishee notice at Annexure-5 concerning the financial year 2009-10 and 2010-11 for an amount of Rs.9,88,223/- and Rs.4,70,416/- respectively. Learned counsel for the petitioner submits that it has not been able to operate its accounts and conduct business in difficult time of CORONA.

Learned counsel for the petitioner has placed reliance opon the interim order passed by a Coordinate Bench of this Court in W.P.(T) No.1177/2020 dated 19th March 2020 wherein in a similar situation the garnishee orders were stayed by this Court till the stay petition is decided by the Commercial Taxes Tribunal. It is submitted that since the Commercial Taxes Tribunal has remained non-functional for a considerable period of time, similar interim order has been passed by this Court in W.P.(T) Nos.1177/2020, 1178/2020 and 1179 of 2020 on 15th February 2021. Learned counsel for the petitioner therefore prays for interim stay of the recovery notices under Annexure-5 for the amount of Rs.9,88,223/- for the financial year 2009-10 and Rs. 4,70,416/- for the financial year 2010-11.

Learned counsel for the respondents has opposed the prayer. However, he is not in a position to dispute that the revision petition along with stay application is pending before the Commercial Taxes Tribunal and that the Commercial Taxes Tribunal has yet not been constituted.

Having regard to the aforesaid facts and circumstances, the operation and implementation of the garnishee notice at Annexure-5 dated 6th November 2020 so far as it relates to the amount of Rs.9,88,223/- for the financial year 2009-10 and Rs. 4,70,416/- for the financial year 2010-11 shall remain stayed till the next date of hearing.

Let the matter be listed on 29th April 2021.

 