**(2016) 08 JH CK 0149**

**In the Jharkhand High Court**

**Case No :** Writ Petition (T) No. 522 of 2008

M/s Shree Shyam Coal Company Ltd. — APPELLANT

Vs

State of Jharkhand — RESPONDENT

**Date of Decision :** 17-08-2016

**Acts Referred:**

Bihar Finance Act, 1981 — Section 24
Constitution of India, 1950 — Article 226

**Citation :** (2016) 4 JLJR 155

**Hon'ble Judges :** Mr. D.N. Patel and Mr. Ratnaker Bhengra, JJ.

**Bench :** Division Bench

**Advocate :** Mr. Atanu Banerjee, G.A, for the Respondents; M/S Biren Poddar, Senior Advocate and Darshana Poddar Mishra, Advocate, for the Petitioner

**Final Decision :** Disposed Off

## Judgement

1. This writ petition has been preferred challenging the order passed by the Joint Commissioner, Commercial Taxes ( Administration), Dhanbad Division, Dhanbad dated 11.12.2007 which is at Annexure 6 to the memo of this writ petition as well as the very initiation of the proceeding at the behest of the Joint Commissioner, Commercial Taxes (Administration), Dhanbad Division, Dhanbad dated 14.10.2006 is also under challenge (Annexure 4 to the memo of this writ petition) mainly on the ground that Assessing Officer has already passed an order on 08.09.2003 which is at Annexure 1 and 1/1 to the memo of this writ petition for the period 2001-2002.

2. It is submitted by learned counsel for the petitioner that this petitioner is selling hard coke as a "Counter sale". Purchaser has to come at the place of this petitioner where the goods are being sold and after purchasing the goods the counter comes to an end. The sale also comes to an end. Subsequent movement of the goods has nothing to do with the same. It is submitted by learned counsel for the petitioner that the goods are being sold within the State of Jharkhand. This explanation has been given to the Joint Commissioner of Commercial Taxes

 

(Administration), Dhanbad Division, Dhanbad. After receiving an order dated 14th October, 2006 (Annexure 4), the reply given by this petitioner is at Annexure 5 which is dated 28.12.2006 in which it has been clearly stated that the movement of the goods from one State to another has nothing to do with the sale of the goods. The sale of the hard coke is nothing but the "Counter Sale" i.e. sale at the business premises of this petitioner. The goods have been moved from one place to another at the desire of the purchasers and the same has not occasioned due to sale. In fact, the burden of proof is upon the State when the movement of goods from one State to another is because of the sale of the goods. It is further submitted by counsel for the petitioner that assuming without admitting that order passed by the Joint Commissioner, Commercial Taxes (Administration), Dhanbad Division, Dhanbad dated 11.12.2007 is correct then also Assessing Officer has not passed an order within a period of two years from the communication of the order passed by the Revisional Authority. This time limit is given in Section 24 of the Bihar Finance Act, 1981 and, now in the year 2016 no such order can be passed by the Assessing Officer and more particularly when there is no stay granted by this Court in this Writ Petition and, hence, also no effect can be given to the order passed by the Joint Commissioner, Commercial Taxes (Administration), Dhanbad Division, Dhanbad.

3. Learned counsel for the respondent-State has submitted that movement of the goods has occasioned immediately after the sale of the hard coke which is presumed to have been occasioned because of the same. Looking to Section 3 of the Central Sales Tax, 1956, there is a presumption of the inter State trade or commerce. Once movement of the goods taken place from one State to another State, it shall be presumed to have been interstate sale. The presumption can be rebutted only upon evidence given by this petitioner. Except bare exceptions there is no evidence led by this petitioner and, hence, the matter has rightly been remanded by the Joint Commissioner, Commercial Taxes (Administration), Dhanbad Division, Dhanbad to verify the books of account etc. of this petitioner and to pass fresh order by the Assessing Officer. Moreover, this petitioner has also paid the Central Sales Tax and has obtained the road permits which are required for transportation of goods from one State to another. But, the fact remains that no fresh order has been passed by the Assessing Officer after the matter was remanded by the Joint Commissioner, Commercial Taxes (Administration), Dhanbad Division, Dhanbad. Counsel for the respondents has further submitted that there is an alternative remedy available u/s 46 (1) & (2) of Bihar Finance Act, and as such, this petition may not be entertained by this court.

4. Having heard counsel for both sides and looking to the facts and circumstances of the case, it appears that major issue raised in this writ petition is whether the sale is interstate sale or intrastate sale. The Assessing Officer has already passed an order dated 08.09.2003 which is annexed as Annexures 1 and 1/1 to the memo of this writ petition. During the year road permits were sought for by this petitioner which was resisted by the respondent and it has been said

that only upon payment of Central Sales Tax this road permits in form no. 28B of Bihar Sales Tax Rules 1983 will be given and, thus, it appears that Central Sales Tax has been paid by this petitioner. It is submitted by counsel for the petitioner that the Central Sales Tax was paid under the protest.

It further appears from the facts of the case that after approximately more than three years an order was passed by the Joint Commissioner,Commercial Taxes (Administration), Dhanbad Division, Dhanbad for taking the order of the Assessing Officer in a suomotu revision under Sections 46 (4) of the Bihar Finance Act, 1981 (Annexure 4 to the memo of this writ petition). The reply given by this petitioner is at Annexure 5 dated 28.12.2006 wherein it has been stated that this petitioner is not liable to make payment of Central Sales Tax, but, he had paid the same under protest and the sale of hard coke is a ''Counter Sale'' meaning thereby that the sale has taken place at the counter of this petitioner and after that the whole transaction was over. Thereafter, the goods are moved from one State to another at the desire of the purchaser and it has nothing to do with the contract of sale. This phenomena has taken place for the whole year 2001-2002 and, therefore, it is outside the purview of Section 3 of the Central Sales Tax, 1956. Looking to the peculiar facts of the present case that after remanding of the matter by the Joint Commissioner, Commercial Taxes ( Administration), vide order dated 11.12.2007, the Assessing officer has not passed any fresh order. No reassessment has been made by the Assessing officer. The respondents have failed to point out to this Court on affidavit that whether the Assessing Officer has passed any fresh order after remand of the matter by the Joint Commissioner, Commercial Taxes (Administration), Dhanbad Division, Dhanbad. In absence of this type of averments made by the respondents, now, looking to the proviso 24 of the Bihar Finance Act, 1981, no reassessment can be passed now. For the ready reference Section 24 of the Bihar Finance Act, 1981 reads as under:

24. Period of limitation for completion of assessment proceedings. Except a proceeding under subsection (5) of section 17, section 18 and subsection (1) of section 19 no proceedings for assessment of the tax payable by a dealer under this part in respect of any period shall be initiated and completed except before the expiry of four years from the expiry of such period.

Provided that a proceeding for reassessment in pursuance of or as a result of an order on appeal, revision and reference or review shall be initiated and completed before the expiry of two years from the date of communication of such order to the assessing authority.

(Emphasis supplied)

In view of the aforesaid provision the reassessment in pursuance of an order passed in a suomotu revision can be initiated and completed before expiry of two years from the date of communication of such order. The date of the Revisional order is 11.12.2007 we are in the year 2016 as on today no order has been passed by the Assessing Officer after the order passed in revision and, hence, we are keeping the issue open whether the transactions in question for the year 2001-2002 were interstate sale or intrastate sale and only on the ground that now no re assessment order can be passed in view of proviso 24 of Bihar Finance Act, 1981 and, hence, no effect can be given to the order passed by the Joint Commissioner, Commercial Taxes (Administration), Dhanbad Division, Dhanbad dated 11.12.2007.

Looking to the proviso of Section 24 of the Bihar Finance Act, when admittedly no order has been passed by the Assessing Officer for the reassessment, we thought it to fit to decide this writ petition on this ground alone without relegating this petitioner for alternative remedy. Even if, alternative remedy is availed the effect of proviso of Section 24 of the Bihar Finance Act remains intact. Thus, no difference it will make whether alternative remedy is availed by this petitioner or not because now, no order of reassessment can be passed by the Assessing officer when a period of two years is lapsed after the communication of the revisional order passed by the Revisional Authority.

5. In view of the above observations, this writ petition is, hereby, allowed and disposed of.

 