(2021) 03 JH CK 0116

In the Jharkhand High Court

Case No : Writ Petition (T) No. 7287 Of 2016

Parle Agro Private Limited APPELLANT

Vs

State of Jharkhand And Ors RESPONDENT

Date of Decision : 08-03-2021

Acts Referred:

Citation : (2021) 03 JH CK 0116

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

Bench : Division Bench

Advocate : Indrajit Sinha, Kumar Vaibhav, Sachin Kumar

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner and the Respondent State.

Respondent Nos. 4 and 5 have not appeared despite service of notice.

2. Grievance of the petitioner is on account of non-issuance of requisite Form-C by the Respondent State for the different periods ranging from 2011-12 to 2014-15. The petitioner under agreements used to sell various goods like Non-Alcoholic Beverage Base (NABB), Mineral Salt Mix, Pet Pre-forms, Fruit Juice, Mango Pulp, etc. to the Respondent No. 4 and 5 through inter-state sales at a concessional rate of tax. On account of non-issuance of Form-C, petitioner had to pay differential rate of interest. It could not avail concessional rate of tax for such inter-state sales.

3. Learned counsel for the Respondent submits, by referring to e-mail at page-242 sent by the Respondent No. 5 that the petitioner was made to believe that department is not issuing Form-C. Therefore, it approached this Court with the following relief (s).

(a) In the nature of mandamus directing the Respondent No. 1 to 3 to ensure issuance of requisite Form C by the Respondent No. 4 and 5 to the petitioner for the inter-state sales made by the petitioner to the Respondent No. 4 and 5, or in the alternative for issuance of an appropriate writ / order / direction upon the Respondent No. 1 to 3 to issue requisite Form C to the petitioner for the inter-state sales made by the petitioner to the Respondent No. 4 and 5.

(b) In the nature of mandamus directing the Respondent No. 1 to 3 to call upon Respondent No. 4 and 5 to furnish information, entire records and returns pertaining to the purchase made by the Respondent No. 4 and 5 from the petitioner and thereupon directing the Respondent No. 1 to 3 to produce such records before this Hon'ble Court.

4. Respondent No. 4 and 5 were noticed but they have chosen not to appear. Pursuant to the order dated 01.02.2021, a supplementary counter affidavit has been filed on 18.02.2021by the Respondent State indicating the status of tax liability of the Respondent No. 4 and 5 for the period 2010-11 to 2012-13. Relevant extracts of para-6 and 7 are quoted hereunder:

"6. Year 2010-11 to 2012-13 Rs. 3430471.00/- approximately demand created for VAT up to 2012-13 and CST for only 2012-13 and against the said demand total Rs. 503378.00/- deposited by the Respondent No. 4 to the Department and the remaining tax liabilities of respondent No. 4 is still pending as a dues amount to the tune of Rs. 2927093.00/- which will be evident from the chart prepared by the Deputy Commissioner of the Commercial Taxes, South Circle, Ranchi on 01.02.2021.

7. Year 2010-11 to 2012-13 Rs. 821590.56/- approximately demand created for VAT up to 2012-13 and against the said demand any payment has been done by the Respondent No. 5 to the Department and the tax liabilities of respondent no. 5 is still pending as a dues amount to the tune of Rs. 821590.56/- approximately which will be evident from the chart prepared by the Deputy Commissioner of the Commercial Taxes, South Circle, Ranchi on 01.02.2021."

5. At paragraph-8 of the affidavit, it is stated that no application for issuance of Form-C by the Respondent No. 4 and 5 is pending before their circle office. Learned A.A.G-II for the Respondent State further submits by referring to para-9 of the affidavit, that if the Respondent No. 4 and 5 apply for issuance of Form-C to the concerned circle office, the same will be issued to them as per the provision of law after the Firm clears all the tax liabilities pending before the State of Jharkhand.

6. Learned counsel for the petitioner submits that issuance of Form-C on any such application made by the Respondent No. 4 and 5 has got nothing to do with the tax liabilities of the Respondent No. 4 and 5, rather it affects the tax liability of the petitioner. However, learned counsel for the petitioner is not able to overcome the legal hurdle in the present writ petition in the absence of any such application made by the Respondent No. 4 and 5 for issuance of Form-C for the respective Financial Years for the inter-state sales transaction with this petitioner. In those circumstances, learned counsel for the petitioner submits that liberty may be reserved for the petitioner to invoke proper remedy before the

appropriate Forum / Court of Law to recover the differential amount of tax paid by it from the concerned Respondent No. 4 and 5, in accordance with law.

7. Learned counsel for the State submits that no writ of mandamus can be issued on the Respondent No. 4 and 5 who are private parties for making an application for issuance of Form-C by the Respondent State. However, in case Respondent No. 4 and 5 make any such application, it shall be considered in accordance with law. Learned counsel for the State has also referred to earlier counter affidavit filed on 17.04.2017 wherein it has been categorically stated at para-14 that registered dealer have not made any application for issuance of Form-C, nor has it cleared its tax liability.

8. We have considered the submissions of learned counsel for the parties and taken into account the facts and circumstances above. It appears that no relief, as prayed for, can be granted in this writ petition as against the Respondent No. 4 and 5 being the private party. However, that does not leave the petitioner remediless. It is open for the petitioner to invoke appropriate proceedings before the competent Forum / Court of Law for recovery of any such amount due under differential tax liability from the Respondent No. 4 and 5 in accordance with law. Accordingly, writ petition is disposed of