
(2017) 02 JH CK 0192
In the Jharkhand High Court
Case No : 635 of 2017

Pradeep Kumar Chaurasia

APPELLANT

Vs

Saroj Kumar & Ors.

RESPONDENT

Date of Decision : 06-02-2017

Acts Referred:

[Jharkhand Value Added Tax Act, 2005](#), [Section 46](#)

Citation : (2017) 02 JH CK 0192

Hon'ble Judges : D. N. Patel, Ratnaker Bhengra

Bench : DIVISION BENCH

Advocate : M.S. Mittal, Rahul Lamba, Saket Upadhyay, Priyanka Naveen Kumar, Rajesh Kumar, Kumar Sundaram

Judgement

1. Office defects shall be removed during course of the day.
2. At the request of both sides, this matter is taken up for its final disposal.
3. Having heard learned counsels for both sides and looking to the facts and circumstances of the case, it appears that for the assessment year 2009-10, for this petitioner the assessment process was completed and the legally payable amount under Jharkhand Value Added Tax Act, 2005 has been fixed at Rs.9,86,38,648/-. However, since the petitioner had already deposited Rs.9,86,36,290/-, the demand for the balance amount of Rs.2,358/- was only raised. Similarly, under Central Sales Tax Act, 1956 for the said financial year 2009-10, an amount of Rs.10,26,101.36 has been fixed which has also been paid. Thereafter, an audit objection has been raised for the assessment year 2009-10 and a reassessment order was passed on 29.06.2015 for Rs.1,24,57,816.66 under Jharkhand Value Added Tax Act, 2005.
4. Being aggrieved by the said order, an appeal was preferred by this petitioner and the same was dismissed on 03.03.2016, against which, Revision case has also been preferred which is pending before the Commercial Taxes Tribunal at

Ranchi. The hearing is already going on and the next date of hearing is fixed as 17th February, 2017.

5. In view of these facts, the respondents-State should not have issued the notice of demand under Section 46 of the Jharkhand Value Added Tax Act, 2005 to be read with Rule 17(2) enacted thereunder. The Revision application preferred by this petitioner is pending before the Commercial Taxes Tribunal. This Revision application cannot be made infructuous by issuance of such type of notice by the respondents-State. It has been held by this Court in W.P.(T) No.6400 of 2014 judgment and order dated 27th February, 2015, in paragraph 6 as under: - "6. Having heard both the sides and looking to the facts of the case, we hereby quash and set aside the order dated 10th December, 2014 passed by the respondents authority, which is at annexure-8, mainly for the facts and reasons:

I. The petitioner is a limited company, who is paying huge tax regularly since last several decades and the petitioner is paying huge tax to the Central Government approximately Rs.11,000 crores and to the State Rs.995 Crores annually. This is not a fly-by-night company.

II. It further appears from the facts of the case that for the months of January, February and March of 2005 the very same officer passed scrutiny order, ex-parte, without appreciating the provisions of Jharkhand Value Added Tax, 2005. Therefore, revision application was preferred by this petitioner before the Commissioner, Commercial Taxes, who passed the order dated 16th September, 2014, which is at Annexure-4 to the memo of the petition, whereby the order passed by the Assessing Officer was quashed and set aside and the matter was remanded.

III. It further appears from the facts of the case that similar mistake has been committed by the very same Assessing Officer for the months of May, June and July, 2014 and again this petitioner has approached the Commissioner, Commercial Taxes by way of revision application. The memo of the revision application is at Annexure-6. Looking to the paragraph no. 1 of Annexure-6, the main contention is raised about the ex-parte order passed by the Assessing Officer. Stay application is also pending before the Commissioner, Commercial Taxes.

It appears from the facts that the arguments are over and the judgment has been reserved by the Commissioner, Commercial Taxes.

IV. It appears that the Assessing Officer has hurriedly passed the order dated 10th December, 2014 which is at Annexure-8.

V. It further appears from the supplementary affidavit filed by the petitioner that for the assessment year 2011-12, the very same Assessing Officer had passed an order which is appealable within a period of 30 days. This petitioner has also preferred an appeal on 29th day viz. before the statutory date of preferring

appeal is over. The attachment order was passed by the very same Assessing Officer.

VI. It ought to be kept in mind by the Assessing Officer that when assessee is regularly paying a huge amount of tax and consistently the orders passed by the very same Assessing Officer are being quashed, he should wait till the judgment, reserved by the Commissioner, Commercial Taxes, is pronounced. The amount of this petitioner was already with the nationalized bank. The money of the Government is secured with the nationalized bank. Petitioner company is not a sick company from any angle. Looking to the paragraph no. 12 to the memo of the petition, the petitioner is paying tax to the Central government which is approximately Rs. 11000 crores and to the State which is approximately Rs. 995 crores, annually. Attachment to the bank accounts should not be a routine phenomena. It shows weakness of the mind. Whenever any company is not in a position to pay the tax or is deliberately avoiding the payment of the taxes for a longer time or the order passed by the authority has not been complied with without any justifiable reason or whenever an assessee is not paying the tax after several demand notices and orders, then attachment order can be passed, but, looking to the facts of the present case it appears that this petitioner has availed the efficacious alternative remedy.

The scrutiny order passed by the Assessing Officer has been challenged in accordance with law. Previously also, similar order passed by the Assessing Officer has been quashed vide order dated 16th September, 2014 and further guidance has also been given to the said officer vide order dated 5th December, 2014 which is at Annexure-7 to the memo of the petition. Similarly, for the year 2011-12 also this Assessing Officer has hurriedly attached the bank accounts before the statutory period, in preferring appeal, was over.

VII. Hon"ble Bombay High Court in the case of The Director of Income Tax(Exemption), Mumbai Vs. The Income Tax Appellate Tribunal Mumbai Branch, & Anr. as reported in 2014-TIOL-154- HC-MUM-IT at paragraph 6,7 & 8 has held as under :

"6. The Act provides a period of sixty days to an assessee to file an appeal from the order of CIT(A) to the Tribunal. This Court in the matter of UTI (supra) has laid down the following guidelines for effecting recovery of dues.

"1. No recovery of tax should be made pending (a) Expiry of the time for filing an appeal; (b) Disposal of a stay application, if any, moved by the assessee and for a reasonable period thereafter to enable the assessee to move a higher forum, if so advised coercive steps may, however, be adopted where the authority has reason to believe that the assessee may defeat the demand, in which case brief reasons may be indicated.

2. The application, if any, moved by the assessee should be disposed of after hearing the assessee and bearing in mind the guidelines in KEC International Ltd. (supra);

3. If the Assessing Officer has taken a view contrary to what has been held in the preceding previous years without there being a material change in facts or law, that is a relevant consideration in deciding the application for stay;
4. When a bank account has been attached, before withdrawing the amount, reasonable prior notice should be furnished to the assessee to enable the assessee to make a representation or seek recourse to a remedy in law;
5. In exercising the powers of stay, the Income Tax Officer should not act as a mere tax gatherer but as a quasi judicial authority vested with the public duty of protecting the interest of the Revenue while the same time balancing the need to mitigate hardship to the assessee. Though the assessing officer has made an assessment, he must objectively decide the application for stay considering that an appeal lies against his order; the matter must be considered from all its facets, balancing the interest of the assessee with the protection of the Revenue. The above order in UTI (supra) was brought to the notice of the Assessing Officer on 13 November 2013 by respondent No.2 while pointing out that it would be filing an appeal and stay application to the Tribunal in respect of the order of CIT(A)."
6. In view of the aforesaid decision also, we, hereby, quash and set aside the notice of demand issued under Section 46 of the Jharkhand Value Added Tax Act, 2005 to be read with Rule 17(2) of the Rules thereunder dated 20th January, 2017 (Annexure 15 to the memo of this writ petition). Nonetheless, if the Revision application is dismissed, the respondent-State is always at liberty to issue such type of notices, if the legally payment amount is not paid by this petitioner towards Jharkhand Value Added Tax Act, 2005 or under Central Sales Tax Act, 1956.
7. This petition is allowed and disposed of.