
(2014) 02 JH CK 0005

In the Jharkhand High Court

Case No : W.P. (T) Nos. 1686 and 1687 of 2013

Rameshwara Jute Mills Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Evidence Act, 1872 — Section 114

Jharkhand Value Added Tax Act, 2005 — Section 13, 23, 24, 35, 35(5)

Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 9

Citation : (2014) 2 AJR 438 : (2014) 44 GST 383 : (2014) 2 JLJR 743

Hon'ble Judges : R. Banumathi, C.J.; S. Chandrashekhar, J

Bench : Division Bench

Advocate : Ananda Sen, Advocate for the Appellant; Rajesh Shankar, Advocate for the Respondent

Judgement

R. Banumathi, C.J. and S. Chandrashekhar, J.—These two writ petitions have been filed by the assessee M/s. Rameshwara Jute Mills Ltd. seeking quashing of demand notices issued for 2010-11 and 2011-12, on the same and similar grounds and therefore, both the writ petitions are being disposed of by a common order. The petitioner has prayed for the following reliefs:

(a) quashing of Notification dated 10.12.2009 as contained in Extraordinary Gazette of India (Part-II of Section 3 of Sub-section (i)) whereby Rule 64D of the Mineral Concession Rules, 1960 has been substituted, being ultra vires to the Constitution of India and the Mines and Minerals (Development and Regulation) Act, 1957,

(b) quashing of demand notices issued by the Commercial Taxes Department, Government of Jharkhand in respect of recovery of Value Added Tax (VAT) for 2010-11, including other demands taking into consideration of the sale price as fixed in terms of Rule 64D of the Concession Rules,

(c) quashing the orders and demands all dated 11.02.2013 whereby value added

tax/interest/penalties at Rs. 3,39,46,556.00 on difference of sale prices has been arbitrarily created and demanded from the petitioner,

(d) declaring that the respondent-Central Government has got no authority to fix sale price of Mineral Iron Ore, which is not a controlled commodities,

(e) directing the Commercial Taxes Department, Government of Jharkhand that Value Added Tax can be levied on the actual sale price in terms of valuable consideration for transfer of property in goods and not on any hypothetical or assumption price,

(f) for a direction to the Commercial Taxes Department, Government of Jharkhand not to take any coercive measures during the pendency of the writ petition, and

(g) any other appropriate writ/writs, order/orders as deem fit and proper in the interest of justice.

2. The petitioner, a Limited Company, is a mining lessee of Mineral Iron Ore and it is engaged in the business of mining and sale of the Iron Ore. The petitioner-company was granted mining lease over an area of 640 acres in Village-Barai Buru-Tatiba, Barajamda, P.S.-Barajamda, District-Singhbhum-West, Jharkhand. The petitioner-company is registered under the Jharkhand Value Added Tax Act, 2005 (hereinafter referred to as "the Act") with TIN-20241200662. It is stated that Schedule-II of the Mines and Minerals (Development and Regulation) Act, 1957 provides the rate of royalty in respect of minerals and in terms of Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957, a mining lessee has to pay royalty on consumption/removal of minerals at the rate prescribed in Schedule-II of the said Act. Entry-22 of Schedule-II provides that the royalty for Iron Ore Lumps and Fines would be the sale price at ad valorem basis. The petitioner was paying royalty at the rate of 1096 of the sale price. Prior to the said Notification there was fixed royalty for different quality (iron content) of Iron Ore on tonnage basis. However, basis was changed to ad valorem by the subsequent Notification. The Central Government in exercise of powers conferred by Section 13 of the Mines and Minerals (Development and Regulation) Act, 1957 amended the Mineral Concession Rules, 1960 and substituted Rule 64D in the Mineral Concession Rules, 1960. Rule 64D provides that the royalty shall be computed on minerals on ad valorem basis according to the formula mentioned therein. The amendment provided that the state-wise sale price for different minerals as published by Indian Bureau of Mines shall be the sale price for computation of royalty in respect of any mineral produced.

3. It is further stated that the Iron Ore is a de-controlled commodity and there is no law restricting or fixing the price of Iron Ore Lumps or any other form of the Iron Ore and therefore, fixing of sale price of Indian Bureau of Mines by virtue of Rule 64D is bad, arbitrary, misconceived, miscalculated and against the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Constitution of India. The Mines and Minerals (Development and

Regulation) Act, 1957 does not give power to make Rule nor does it give power to any authority to fix sale price of minerals. The sale price may depend upon the quantity of the Mineral Ore and thus, a lesser quantity may fetch higher price whereas, in bulk sale the price may come down and thus, there cannot be fixed sale price in respect of de-controlled item. At no point of time either the Assessing Authority or Indian Bureau of Mines took any data from the petitioner-company to ascertain what is the sale price of the Iron Ore sold by the petitioner-company and therefore, the Indian Bureau of Mines or any authority cannot assume a sale price for the petitioner-company.

4. The petitioner-Company received a notice dated 05.06.2012 whereby it was directed to clarify the points raised in the notice for the assessment year 2010-11 by appearing on 28.06.2012. A similar notice was issued for the assessment year 2011-12. However, on 11.02.2013 itself without hearing the petitioner-company, an amount of Rs. 3,39,46,556.00 was imposed as penalty and tax for the period 2010-11, and an amount of Rs. 10,08,394.94 was imposed as penalty and tax for the period 2011-12 in a most arbitrary manner and in utter violation of the principles of natural justice. It is further stated that the Commercial Taxes Department of the State of Jharkhand in a most arbitrary manner and without any provision in law, has taken the sale price as notified by the Indian Bureau of Mines, for the purpose of collection of royalty as the actual sale price of the petitioner-company and therefore, the assessment is absolutely illegal. The petitioner-company has not suppressed any sale figure or any sale amount and therefore, not liable to pay any amount. It is also stated that, there being no evidence that the petitioner-company has escaped tax, any proceeding u/s 40(2) of the Act cannot be initiated and no order can be passed.

5. A counter-affidavit has been filed on behalf of Respondent Nos. 3 and 4 stating that the petitioner has moved this Hon"ble Court without availing the alternative remedy of Appeal available to him under the Act. It is stated that the petitioner has not moved the Court with clean hands and it has indulged in tax evasion by deliberately undervaluing its products in the invoices raised by it. Section 35(7) of the Jharkhand Value Added Tax Act, 2005 was introduced to curb tax evasion which the dealers were adopting by way of undervaluation or under-pricing in the sale invoices than the actual price. Section 35(7) of the Act has become an effective tool for checking tax evasion and this is in the interest of public revenue.

6. It is stated that certain data were obtained from the Mining Department and for verification of those figures notice was ordered to be issued on 05.06.2012, fixing date of hearing on 28.06.2012 in both the cases. Thereafter, for the assessment year 2011-12, the date of hearing was fixed on 16.10.2012 vide notice No. 2150 dated 03.10.2012. Next date of hearing was fixed on 11.02.2013 vide notice No. 4589 dated 17.01.2013. The notice dated 03.10.2012 was received by the petitioner-company on 13.10.2012 and notice dated 17.01.2013 was received on 07.02.2013 thus, the department gave many opportunity of hearing to the petitioner-company. Similarly, for the assessment year 2010-11,

first notice was issued on 05.06.2012 and thereafter, the proceeding before the Assessing Officer took place on 28.06.2012, 11.07.2012, 08.08.2012, 27.08.2012, 27.09.2012, 10.11.2012, 24.12.2012, 17.01.2013 and 11.02.2013. The proceeding was initiated on 05.06.2012, i.e., about seven months prior to the final order dated 11.02.2013 however, the petitioner-company was deliberately delaying the proceeding.

7. It is stated that the petitioner-company did not take any step on 17.01.2013 and on 11.02.2013 appeared through its representative and filed a time petition seeking one month's time, but the same was rejected as the petitioner-company enacted to evade tax by delaying the matter. On 05.06.2013, the Respondent No. 3 issued a notice and for filing show-cause in respect of the concealment of actual sale price of Iron Ore. The Respondent-Authority had procured detail of return filed with the Mining Department, Chaibasa and on perusal of the same, it was found that the petitioner company used to show in the return filed with the Respondent No. 3, the sale price of the Iron Ore lesser than the average market price and average price fixed by Indian Bureau of Mines.

8. It is also stated that in course of the proceeding, the Assessing Officer collected figures from three big mine owners namely, M/s. Orissa Manganese and Mines (P) Limited, M/s. Rungta Mines Limited, Chaibasa and M/s. Sah Brothers, Chaibasa for the different periods and different "Fe grades" to determine the average sale price on the basis of "Fe grades" contents in the mines which is authentic and reasonable and published in the Gazette of Government of India. Thereafter, month-wise and period-wise and average sale price-wise comparative chart was prepared.

9. It is further stated that the Indian Bureau of Mines is a Government of India agency which determines and publishes the average sale price of minerals for each month area-wise and grade-wise after taking into account the average sale price of 10 big dealers of the products in that particular area and thus, the average sale value published by Indian Bureau of Mines is the most authentic and reliable and cannot be disputed. The respondents collected the figure of raising and dispatches from the Mining Office, Chaibasa which included data of dispatches per month. On perusal of data received from the Mining Office and sale details furnished in returns, it was noticed that, in comparison to prevalent market price as shown in the sale invoices by the assessee and average sale price as determined by Indian Bureau of Mines, the Iron Ores have been shown to have been sold at a much lower selling price. The matter thus, became concealment of actual sale price by under pricing and therefore, the respondent-authority issued notices on 05.06.2013 for the period 2010-11 and 2011-12 respectively which were duly served upon the petitioner-company however, the petitioner did not produce books of account for verification. The matter was heard on different dates and thereafter, the answering respondent passed order on 11.02.2013, after providing sufficient opportunity to the petitioner. As a matter of fact, the petitioner-company neither filed any explanation nor produced

any evidence which shows the mala fide intention of the petitioner to evade tax by way of showing lesser sale price than the actual market price as well as the price fixed by Indian Bureau of Mines. The respondent-authority passed order on the basis of available documents and evidences on record under Sections 35(7) and 40(2) of JVAT Act, 2005 in the interest of revenue.

10. Though, in the writ petition, vires of notification dated 10.12.2009 has been challenged and a declaration has been sought that the Central Government by virtue of substitution of Rules 64D of the Mineral Concessions Rules 1960 has got no authority to fix sale price of iron ore which is a de-controlled item, the learned counsel for the petitioner during the course of argument submitted that the petitioner is not pressing those prayers at this stage and confined his argument only to the question of violation of principles of natural justice and prayed for remand of the matter to the Assessing Authority for a fresh decision in the matter.

11. The learned counsel for the petitioner, Mr. Ananda Sen submitted that the impugned order is vitiated on account of gross violation of the principles of natural justice. The learned counsel referred to Section 35 of the Jharkhand Value Added Tax Act, 2005 which deals with "assessment and self assessment" and submitted that sub-section (5) of Section 35 and sub-section (7) of Section 35 are two different provisions for two different purposes. It was submitted that as per Section 35(7) of the Act, the authority has to record reasons and no order shall be passed without giving proper opportunity of being heard to the assessee. It was submitted that before passing order under sub-section (7) of Section 35, the Assessing Officer has to give notice u/s 35(7) as well as adequate opportunity of being heard. The learned counsel further submitted that Section 40(1) deals with turnover escaping assessment and Section 40(2) of the Act deals with payment of interest and before ordering for payment of interest, the prescribed authority has to afford an opportunity of hearing to the assessee and by an order in writing direct that the assessee shall, in addition to any tax payable which is or may be assessed u/s 35 or 36 or 38, pay by way of interest at the rate stipulated thereon. It is submitted that the proviso to Section 35(7) and Section 40(2) and the scheme of the Act do stipulate that at each and every stage there is a requirement of issuing notice and opportunity of hearing before passing the impugned order.

12. It was submitted that without giving an opportunity of hearing and without issuing notice as contemplated under the proviso to Section 35(7), the Assessing Officer unilaterally passed the order u/s 35(7) and thereafter, passed an order u/s 40(2) of the Act. It was further submitted that the notice dated 17.01.2013 was issued fixing the date of hearing on 11.02.2013 and on 11.02.2013, the petitioner appeared and filed a time-petition but the Assessing Authority ignored the same and passed the impugned order without giving the petitioner an opportunity of hearing and therefore, there is gross violation of principles of natural justice. The learned counsel further submitted that even though Section

79 provides a provision for appeal to Joint Commissioner or the Deputy Commissioner, in view of violation of principles of natural justice and since the impugned order is without jurisdiction, the same is liable to be quashed in exercise of jurisdiction under Article 226 of the Constitution of India.

13. Mr. Rajesh Shankar, the learned counsel appearing for the respondents submitted that in a pending proceeding when the Assessing Officer noticed that the value of goods has not been properly declared by the assessee, he took recourse of sub-section (7) of Section 35 of the Act. The proceeding before the Assessing Officer would disclose that the Assessing Officer is entitled to call for the materials/documents to ascertain whether the assessee has disclosed the true particulars of goods in the return or not and that is what vide order-dated 05.06.2012, the Assessing Officer has done by calling for details from the Department of Mines.

14. It is further submitted that there is no requirement for issuing a fresh notice for proceeding u/s 35(7) of the Act as it is in continuation of pending proceeding u/s 35 of the Act. The provision u/s 35(7) does not provide issuance of a fresh notice and it only uses the expression "reasonable opportunity of being heard." Referring to section 37 of the Act, the learned counsel submitted that since the audit assessment would be assessment pursuant to the assessment done u/s 35 or Section 36 of the Act, therefore, there is a requirement of issuing notice to the assessee as it would not be known to the assessee if any proceeding u/s 37 is initiated, after the assessment u/s 35 or Section 36 of the Act was completed. It is further submitted that Section 40(1) of the Act comes into play after the regular assessment whereas. Section 40(2) of the Act is attracted even before or during the regular assessment.

15. Mr. Rajesh Shankar, the learned counsel appearing for the respondent-State of Jharkhand has submitted that the impugned order has been passed during the assessment proceeding and during the assessment proceeding the Assessing Officer can ask the assessee as well the Department to furnish the details of return filed and any other material relevant for the purpose of assessment.

16. Referring to the provisions contained in sub-sections (1) to (5) of Section 35, the learned counsel has submitted that the proceeding for assessment and self-assessment concludes u/s 35(5), if the prescribed authority is satisfied that the return or revised-return as the case may be, and self-assessment claim are prima facie correct and the prescribed authority accepts self-assessment. However, if the prescribed authority is not satisfied then the prescribed authority proceeds u/s 35(7) and there is no requirement of issuance of any fresh notice to the assessee as the proceeding u/s 35(7) would be a continuation of the proceeding u/s 35(5). It is thus submitted that Section 35(7) does not require issuing a fresh notice in cases in which the proceeding u/s 35 of the Jharkhand Value Added Tax Act, 2005 is in progress. It only talks of providing an opportunity of hearing to the dealer/assessee. Contrasting the provision u/s 35(7) with Section 37 which relates to audit assessment, the learned counsel has

submitted that while Section 37 specifically requires serving a notice in the prescribed manner to the dealer/assessee however, no such requirement can be read into Section 35(7). In support of the above contention, Mr. Rajesh Shankar, the learned counsel for the respondents has submitted that taxing statute must be construed strictly and the legislative intention has to be gathered from the written words in the provision.

17. The learned counsel for the respondent-State of Jharkhand has further submitted that though there is no requirement in law for issuing a separate notice for proceeding u/s 40(2) of the Jharkhand Value Added Tax Act, 2005, by way of abundant precaution Assessing Authority has issued notice u/s 40(2) of the Act. It is submitted that Section 40(2) of the Act also requires only affording a reasonable opportunity of hearing to the assessee which in the present case was offered to the assessee however, only for delaying the proceeding and avoiding payment of tax legally payable, the assessee did not avail of the opportunity granted by the Assessing Officer and therefore, the assessee cannot complain of violation of the principles of natural justice.

18. We have heard the learned counsel appearing for the parties and perused the documents on record.

19. With respect to applicability of the provision under sub-sections (1) to (5) of Section 35 of the Jharkhand Value Added Tax Act, 2005, no dispute has been raised by the counsel for both the parties and it is accepted that if the prescribed authority is satisfied that the return or revised return as the case may be, and self-assessment claim is prima facie correct, consistent and complete, the prescribed authority accepts self-assessment as filed by the dealer and proceeds to assess the amount of tax and interest due from the dealer on the basis of such return, after making prima facie adjustment in the nature of arithmetical error, if any, in the return and the self-assessment.

20. With respect to scope and mandate of sub-section (7) of Section 35 of the Act, the learned counsel for the petitioner has submitted that the words "before initiating such proceeding" would indicate that the proceeding u/s 35(7) of the Act is an independent proceeding and before resorting to section 35(7) of the Act, the Assessing Officer is required to give reasons and record his satisfaction and no order u/s 35(7) can be passed without affording an opportunity of being heard to the assessee. Per contra, Mr. Rajesh Shankar, the learned counsel appearing for the Revenue has contended that since in a pending proceeding, the Assessing Officer has proceeded to determine the value of goods u/s 35(7) of the Act, there was no requirement for issuing a fresh notice to the assessee.

21. It is not disputed by the parties that the impugned order has been passed when the regular assessment u/s 35 of the Act was in progress. On 5.06.2012 the Assessing Officer issued notice to the assessee for verification of the data received from the Department of Mines. From the proceeding before the Assessing Officer, it appears that the Assessing Officer did not accept the self-

assessment as filed by the assessee u/s 35(5) of the Act and therefore, the Assessing Officer proceeded to assess the value of goods u/s 35(7) of the Act. Proviso to Section 35(7) provides that prescribed authority is required to record reason and afford opportunity of being heard to the dealer. In the present case, the proceeding before the Assessing Officer discloses that when it was found that the sale price as disclosed by the assessee and the data supplied by the Department of Mines, Chaibasa were not in conformity with each other and the assessee had intentionally paid less VAT by showing lesser sale price, the Assessing Officer proceeded to assess the value of goods and consequently tax and penalty under Sections 35(7) and 40(2) of the Act respectively. It is further disclosed that sufficient opportunity was afforded to the assessee however, on date fixed the assessee either did not appear or took time. We are of the view that a separate notice under sub-section (7) of Section 35 of the Act was not required to be issued as it was in continuation to the proceeding under the regular assessment proceeding u/s 35(5) of the Act. The proceeding before the Assessing Officer clearly demonstrates that the Assessing Officer has recorded reason and thereafter, proceeded in the matter.

22. In view of the aforesaid discussion, we are of the view that a requirement of issuing a fresh notice u/s 35(7) and u/s 40(2) of the Act cannot be read into the provisions u/s 35(7) or u/s 40(2) of the Act as it mandates a requirement of affording an opportunity of hearing only.

23. It is also well-settled that even if source of power is not referred to or a wrong provision of law has been referred while exercising power, that by itself would not vitiate the order.

24. In J.K. Steel Ltd. Vs. Union of India (UOI), , the Hon''ble Supreme Court has held that, if the exercise of power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of the power in question.

25. In N. Mani v. Sangeetha Theatre [2004] 12 SCC 278, a three Judge Bench of this Court succinctly observed as follows:

9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.

26. In Md. Shahabuddin Vs. State of Bihar and Others, , the Hon''ble Supreme Court has held that when an Authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision. The Hon''ble Supreme Court has observed as under:

208.In such cases, this Court will always rely upon Section 114 illustration (e) of the Evidence Act to draw a statutory presumption that the official acts are

regularly performed and if satisfied that the action in question is traceable to a statutory power, the courts will uphold such State action.

27. In the present case, a common Form is prescribed for issuing notice. The incorrect mentioning of the provision of law or even if it is not indicated in the notice issued to the assessee that the Assessing Officer has proceeded u/s 35(7), it would not prejudice the assessee as from the materials on record it is evident that the Assessing Officer has recorded reasons for proceeding against the assessee and thus, the assessee knew as to the nature of the proceeding and the demand raised by the Assessing Officer.

28. The learned counsel for the petitioner has submitted that the assessee was not afforded reasonable opportunity of hearing and no proper notice was given to the assessee before the impugned order dated 11.02.2013 was passed. We find that the record produced in the W.P.(T) No. 1686 of 2013 discloses that when the data with respect to raising and dispatch of the goods from the assessee company was received from Mines office, Chaibasa on 5.06.2012 a notice was ordered to be issued to the assessee for producing evidence for verification of the data and the assessee appeared on 28.06.2012. By order dated 11.07.2012 another notice was issued to the assessee for producing the record. On the next date i.e. on 08.08.2012 no one appeared on behalf of the assessee and the matter was fixed for 27.08.2012 when the matter was heard in part. On the next date the assessee again absented and the matter was adjourned for 10.11.2012. On 10.11.2012 an application was moved on the ground of illness of the assessee. On the next date i.e. on 24.12.2012 the matter was heard and the matter was fixed for 11.02.2013 for orders. On 17.01.2013 notice u/s 40(2) of Jharkhand Value Added Tax, 2005 was ordered to be issued to the assessee seeking explanation from the assessee. On 11.02.2013 the assessee sought one month's time which was not accepted by the Assessing Officer and in the interest of Revenue the Assessing Officer proceeded to assess the tax. From the proceeding before the Assessing Officer, it is clear that the assessee appeared on 28.06.2012, 27.08.2012, 10.11.2012, 24.12.2012 and 11.02.2013. The assessee did not appear before the Assessing Officer on 08.08.2012 and 27.09.2012 and the assessee sought adjournment on 27.08.2012 and 10.11.2012. On 11.02.2013 the assessee again sought one month's time which was rejected by the Assessing Authority and the Assessing Officer proceeded to pass the final order. Similarly, in W.P. (T) No. 1687 of 2012 for the assessment year 2011-12, first notice was issued on 05.06.2012 and thereafter, the proceeding before the Assessing Officer took place on 28.06.2012, 03.10.2012, 17.01.2013 and 11.02.2013-We are of the view that sufficient opportunity was given to the petitioner-company. The petitioner was heard by the Assessing Officer. There was not required in law for issuing fresh notices u/s 35(7) and u/s 40(2) of the Act to the assessee and therefore, we are of the view that the impugned order dated 11.02.2013 has not been passed in violation of the principles of natural justice.

29. The respondents have taken an objection to the maintainability of the writ

petition on the ground of availability of statutory remedy of Appeal/Review/Revision. The Jharkhand Value Added Tax Act, 2005 provides forum for appeal, revision and review of the orders passed under the Act. Section 79 provides that against the order of assessment or penalty or both passed by the prescribed authority appeal lies to the Joint Commissioner or the Deputy Commissioner especially authorised in this behalf. Sub-section (5) of section 79 provides that the Appellate Authority may confirm, annul, reduce, enhance or otherwise the order passed by the prescribed authority or set-aside the order directing the Assessing Authority to make fresh order. Thus, there cannot be any doubt that Appellate Authority has vast powers u/s 79 of the Act. Similarly, Section 80 makes a provision for revision to the Tribunal against an order passed in the Appeal. Section 81 provides that against the order passed by the Tribunal u/s 80 of the Act, review would lie to the State Government. In the present writ petition, the petitioner has not disclosed any reason for not approaching the statutory authority under the Act.

30. In AIR 1947 78 (Privy Council) , Lord Uthwatt, J. observed that in the provenance of tax where the Act provided for a complete machinery which enabled an assessee to effectively raise in the Courts the question of validity of an assessment denied an alternative jurisdiction to the High Court to interfere. In *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, the assessee aggrieved by the order of assessment made by the Sales Tax Officer approached the High Court. The Hon'ble Supreme Court held that since the Act provides for a complete machinery to challenge an order of assessment, the impugned order of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. The Hon'ble Supreme Court has observed as under:

11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under sub-s. (1) of S. 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-s. (3) of S. 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under S. 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Art. 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of....

12. Furthermore, the Act provides for an adequate safeguard against an arbitrary or unjust assessment. The petitioners have a right to prefer an appeal under sub-s. (1) of S. 23 of the Act subject to their payment of the admitted amount of tax as enjoined by the proviso thereto. As regards the disputed amount of tax, the

petitioners have the remedy of applying for stay of recovery to the Commissioner of Sales Tax under C.. (a) of the second proviso to sub-s. (1) of S. 13 of the Act....

31. In Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , the Hon"ble Supreme Court has observed that Article 226 is not meant to short circuit or circumvent statutory procedures. The Hon"ble Supreme Court has observed as under:

3.It is only where statutory remedies are entirely ill suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Art. 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Art. 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other The practice certainly needs to be strongly discouraged.

In the background of facts as notices above, we hold that the assessee was afforded sufficient opportunity of hearing and the impugned order has not been passed in violation of the principles of natural justice. Since the Jharkhand Value Added Tax Act, 2005 provides an effective remedy of appeal, these writ petitions cannot be entertained by this Court and accordingly, the writ petitions are dismissed. It is made clear that we have not expressed any opinion on the merits of the case. Since huge amount of revenue is involved, a liberty is granted to the assessee to move the appellate authority, if so advised, within a period of 4 weeks from today. However, if the assessee does not move the appellate authority within the aforesaid period, the respondent No. 3 is directed to proceed against the assessee in accordance with law.