(2012) 02 JH CK 0040

In the Jharkhand High Court

Case No : Writ Petition (T) No. 3085 of 2002

Sri Birendra Kumar Agarwala — APPELLANT

Vs

The State of Jharkhand and others — RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Citation : (2012) 02 JH CK 0040

Hon'ble Judges : Prakash Tatia, J;Aparesh Kumar Singh, J

Bench : Division Bench

Judgement

1. The grievance of the writ petitioner in this writ petition is only a Certificate Case No. 45/ST/99-2000 was initiated by the Additional District Magistrate-cum-Certificate Officer, Dhanbad for realization of a sum of Rs. 3,62,017.16/-, which is the amount under the reassessment order and the order was passed under the Bihar Finance Act, 1981 and Central Sales Tax Act, 1961 for the period 1988-89.

2. The petitioner''s contention was that in a revision petition, Revision Case No. C.C.(S) No. 452 of 1994-95 was pending before the Commissioner of Commercial Taxes, Patna, wherein an interim order was passed on staying the recovery of demand amount and inspite of that interim order, the Recovery Officer proceeded. However, from the facts, it appears that the stay order was limited to 20.9.2000 and, therefore, the Recovery Officer proceeded to recover the amount.

3. When the matter was listed before this court on 17.5.2002, this fact was taken note by the Division Bench of this court that the revision is pending and in that revision an order to stay was granted, however it was effective till 20.9.2000. After noticing this fact, this court directed the Additional Advocate General to file counter affidavit within 3 weeks and interim order was passed that meanwhile, no coercive steps shall be taken against the petitioner.

4. If any stay order was passed by the Commissioner, Commercial Taxes then the recovery proceeding could not have been continued, but in this case, as stated above, the stay order was limited and after expiry of the period of stay, the

recovery proceeding again started by the recovery officer, which cannot be said to be wrong. But in this case, by this court, on 17.5.2000 it has been ordered that no coercive step shall be taken against the petitioner and thereafter, more than 9 years have passed.

5. Therefore, we dispose of this writ petition holding that in the recovery proceeding, no coercive steps shall be taken against the petitioner till the final decision of the revision petition, which may, at that time, was pending before the Commissioner, Commercial Taxes Patna and now may have been transferred before Commissioner of Commercial Taxes, Ranchi or any authority. It is also made clear that if the revision petition has already been decided finally and in case against the recovery there is no stay order obtained by the writ petitioner, then the recovery authority is free to take steps including coercive measure against the petitioner. However, if the revision petition has not been decided by the Commissioner of Commercial Taxes then the Commissioner shall decide the revision petition on or before 31.3.2012.

6. The copy of the order be sent to Recovery Officer Additional District Magistrate-cum-Certificate Officer, Dhanbad and to the Commissioner of Commercial Taxes, Ranchi.