
(2014) 02 JH CK 0002
In the Jharkhand High Court
Case No : W.P. (T) No. 4080 of 2013

Sri Ram Mineral Company

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Jharkhand Value Added Tax Act, 2005 — Section 35, 35(7), 40(2)

Citation : (2014) 3 AJR 451 : (2014) 2 JLJR 305

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

Bench : Division Bench

Advocate : Indrajit Sinha and Krishanu Ray, Advocate for the Appellant; Ajit Kumar for the State and Mr. Md. Mokhtar Khan for the Union of India, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—In this writ petition, the assessee has prayed for issuance of an appropriate writ quashing the demand dated 26.2.2013. A further prayer seeking a direction to the Commercial Taxes Department, Government of Jharkhand, to levy Value Added Tax on the actual sale price and not on any hypothetical or assumptive price, has been made. The petitioner is a Mines owner, engaged in the business of mining. The petitioner-company was granted mining lease in respect of Iron Ore and Manganese over an area of 657 acres in the villages Barajamda, Khasjamda and Parambaljori within the District of Singhbhum West. The petitioner has been paying royalty @ 10% of the sale price. It is stated that Iron Ore is a decontrolled item and there is no law restricting or fixing the sale price of Iron Ore. On 18.2.2013, a notice was served upon the petitioner whereby it was intimated that the petitioner-company has been assessed for the period 2010-11 u/s 35(7) and Section 40(2) of the JVAT Act, 2005, The petitioner was directed to appear on 26.2.2013 on which date the representative of the petitioner-company namely, Mukesh Kumar and Pawan Verma appeared however, no opportunity of hearing was offered and the impugned order dated 26.2.2013 was passed raising a demand of Rs. 3,47,38,258.54.

2. A counter-affidavit and supplementary counter-affidavits have been filed on behalf of respondent Nos. 3 and 4. It is stated that details of returns filed with the Mining Department, Chaibasa was procured and on perusal of the same, it was found that the petitioner-company used to show price in its sale invoices which was lesser than the actual market price and the average price fixed by IBM. The matter thus, became concealment of actual sale price leading to evasion of tax, A notice was accordingly, issued under Sections 35 and 40(2) of the JVAT Act, 2005 for the period 2010-11. On 26.2.2013, neither any explanation was submitted nor any evidence was produced on behalf of the petitioner-company and therefore, the Assessing Officer passed the final order.

3. Heard the learned counsel appearing for the parties and perused the documents on record.

4. Mr. Indrajit Sinha, the learned counsel appearing for the assessee assailed the impugned order dated 26.2.2013 on the ground of violation of the principles of natural justice. The learned counsel has submitted that, on 18.2.2013, a notice was ordered to be issued to the petitioner and date of hearing was fixed on 26.2.2013 however, without affording adequate opportunity of hearing, the impugned order was passed on 26.2.2013 itself. The learned counsel for the petitioner has submitted that, though the representative of the petitioner-company appeared on 26.2.2013, the Assessing Officer has erroneously, recorded that no one appeared on behalf of the assessee-company. Even if that is so, the Assessing Officer was required to grant at least one more opportunity to the assessee-company which admittedly was not granted to the assessee-company in the present case and therefore, the impugned order dated 26.2.2013 has been passed in gross violation of the principles of natural justice. The learned counsel has further submitted that before passing an ex-parte order, the Assessing Officer was required to pass an order for proceeding ex-parte in the matter and thereafter only the order could have been passed by the Assessing Officer. The learned counsel has relied on decisions reported in *Sahara India and Others Vs. M.C. Aggarwal Huf*, .

5. As against the above, Mr. Ajit Kumar, the learned Additional Advocate-General, appearing for the respondents has submitted that, on verification of the data received from the Mining Office, Chaibasa, with the return filed by the assessee-company when it was found that the assessee-company has intentionally raised invoices showing lower rate of sale than the actual sale price, then the Assessing Officer issued notice to the assessee-company. On 26.2.2013, no one appeared on behalf of the assessee and therefore, the Assessing Officer proceeded to pass order under Sections 35(7) and 40(2) of the JVAT Act, 2005. The learned Additional Advocate-General has submitted that, the plea which has been raised by the assessee-company in the present proceeding can also be raised before the appellate authority and since there is effective remedy provided under the Act itself, the present writ petition is liable to be dismissed.

6. Without going into the other factual aspect of the matter, we feel that the writ

petition deserves to be allowed for the following reasons. We find that a notice was ordered to be issued to the assessee on 18.2.2013 and date of hearing was fixed on 26.2.2013. It is an admitted position that on 26.2.2013 itself, the impugned demand has been issued. It is also not disputed by the parties that the proceeding initiated by the Assessing Officer was not in a pending proceeding.

7. Relying on the decision in *Canara Bank and Others Vs. Shri Debasis Das and Others*, , the learned counsel for the petitioner has submitted that, even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The learned counsel has laid stress on the observation of the Hon''ble Supreme Court in paragraph 21 of the said judgment, which is extracted below:--

21. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "*nemo judex in causa sua*" or "*nemo debet esse judex in propria causa sua*" as stated in *Earl of Derby's* case that is, "no man shall be a Judge in his own cause". Coke used the form "*aliquis non debet esse judex in propria causa, quia non potest esse judex et pars*" (Co. Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as Judge and at the same time be a party". The form "*nemo potest esse simul actor et judex*", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "*audi alteram partem*", that is, "hear the other side". At times and particularly in continental countries, the form "*audietur et altera pars*" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the *audi alteram partem* rule, namely "*qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit*" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" [see *Boswel's* case (Co Rep at p. 52-a)] or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

8. In the present case, this is not in dispute that the first notice was issued to the assessee on 18.2.2013 calling upon the petitioner to appear on 26.2.2013 and the impugned order has been passed on such first hearing date, that is, on 26.2.2013. An amount of Rs. 3,47,38,258.54 on account of tax and interest has been ordered to be paid by the petitioner. According to the petitioner,

petitioner's representatives, namely Mukesh Kumar and Pawan Verma, appeared before the assessing authority, but without affording an opportunity to them, impugned order was passed. Per contra, according to the respondents, on 26.2.2013, neither the petitioner, nor the representatives appeared. Without going into the rival statements of the parties, since the impugned order dated 26.2.2013 has visited the petitioner with serious civil consequences, we are of the view that the petitioner should have been afforded sufficient opportunity at least by giving one more hearing to put forth their case. The petitioner has been ordered to pay the aforesaid amount by the Assessing Authority arriving at a conclusion that value of the goods was not truly disclosed by the assessee or the assessee has concealed the actual sale price. However, as noticed above, the assessee was not given adequate opportunity of hearing. In view of the aforesaid, we are of the view that the impugned order dated 26.2.2013 is liable to be quashed and is hereby quashed. Since, we have held that the impugned order has been passed in violation of the principles of natural justice, the matter is remitted back to the Assessing Officer for taking a decision afresh, after affording adequate opportunity of hearing to the petitioner-assessee. The assessee is directed to appear before the Assessing Officer on 14.3.2014 when the Assessing Officer will fix a date of hearing.