(2012) 08 JH CK 0169

In the Jharkhand High Court

Case No : Writ Petition (T) No. 370 of 2008

Tata Cummins Ltd. and Another APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Citation : (2012) 08 JH CK 0169

Hon'ble Judges : Prakash Tatia, C.J;Jaya Roy, J

Bench : Division Bench

Advocate : Pallav Shishodia, Mr. V.P. Singh, M/s. S. Sukumaran, Ashok Kumar Sinha, Sumeet Gadodia and Sandeep Karhail, for the Appellant; Rajesh Shankar, G.A. and Mr. Srijeet Choudhary, G.A., for the Respondent

Judgement

1. Heard learned counsel for the parties. The writ petitioners are aggrieved against the order dated 28th December, 2007 (Annexure-10) whereby the writ petitioner''s contention was rejected and it has been held that the petitioners are liable to pay the additional tax amounting to Rs. 24,18,44,118.50 and surcharge amounting to Rs. 14,28,42,906.67 total Rs. 38,46,87,025.17. The said order was passed in pursuance of the direction given the Hon''ble Supreme Court in Interlocutory Application No. 4 filed in Civil Appeal No. 10272 of 2003 dated 24th July, 2007 whereby the Hon''ble Supreme Court observed that the contention which is sought to be raised now by the State before the Supreme Court "with respect to the various components of tax" under the Bihar Sales Tax Act was not the argument advanced by the State when Civil Appeal No. 10272 of 2003 was heard and, therefore, this question was not examined by the Supreme Court and Hon''ble Supreme Court also observed that this question is required to be first examined by the department, obviously by the Assessing officer, after issuing show cause notice to the petitioners as to why their claim for refund/adjustment on account of additional tax and surcharge should not be rejected as falling outside the above 2 notifications. In view of the said order, since the authority rejected the petitioners'' stand and fastened the liability of the amount of more than Rs. 38 crores, therefore, the writ petitioners have preferred this writ

petition.

2. We heard learned counsel for the parties and perused the order dated 28th December, 2007. The order dated 28th December, 2007 is absolutely a cryptic order and the authority has not decided the issue even in favour of the department by examining that what are the components of the tax and whether under the head ''tax'' all taxes like sales tax, purchase tax, additional tax and surcharge are included. The department has not examined said stand of the writ petitioners even when that was the stand taken by the writ petitioners before the Assessing Officer their reply. Even the Assessing Officer has not considered the direction issued by the Hon''ble Supreme Court which clearly says that "we clarify that it would be open to the Department to issue show cause notice to Tata Cummins Ltd. as to why their claim for refund/adjustment on account of additional tax and surcharge should not be rejected as falling outside the above 2 notifications". Thereafter Hon''ble Supreme Court made it clear that competent authority shall thereafter decide the question of admissibility of the claim made by the company in accordance with law and further made it clear that all contentions on both sides are expressly kept open and the competent authority shall decide whether under the said two notifications the company''s claim for refund/adjustment qua additional tax and surcharge was at all admissible. Therefore, from the above direction of the Hon''ble Supreme Court it is clear that the direction was made to the authority to decide the question after giving opportunity to the writ petitioners. The writ petitioners availed the opportunity of contesting the issue raised by the State before the Hon''ble Supreme Court which was not entertained by the Hon''ble Supreme Court on the ground that this issue was not the contention raised by the State before the Supreme Court in Civil Appeal No. 10272 of 2003 and, therefore, no decision was given by the Hon''ble Supreme Court on that issue in judgment dated 24th July, 2007. Therefore, the issue which was raised by the State/Department and which was contested by the writ petitioners should have been decided in accordance with law and could not have been decided by merely saying that explanation given by the writ petitioners is not satisfactory, therefore, rejected. In view of the direction of the Hon''ble Supreme Court it was the duty of the Assessing Officer to examine the question in accordance with the provisions of law. As we have already observed that the order passed by the Assessing Officer is non-speaking order and by this order the contentions raised by the writ petitioners in the written reply has been rejected without considering them. Therefore, on this ground alone, the order dated 28th December, 2007 is liable to be set aside, hence, set aside. Since the matter is old one, therefore, we direct the Assessing Officer to decide the question raised by the State and referred to it by the Hon''ble Supreme Court vide order dated 24th July, 2007 after giving the opportunity of hearing to the writ petitioners and the authority may pass a brief reasoned order. As we have already noticed that the matter is very old one, therefore, we direct both the parties to appear before the Assessing Officer on 15th September, 2012 and the question will be decided by the said authority expeditiously, preferably before

15th October, 2012.

The writ petition is accordingly allowed.

