
(2014) 12 JH CK 0054

In the Jharkhand High Court

Case No : WP (T) Nos. 1907, 1908, 1926, 1933, 1939, 1941 and 1942 of 2013

Tata Cummins Ltd.

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Citation : (2014) 12 JH CK 0054

Hon'ble Judges : Rongon Mukhopadhyay, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : Sumeet Gadodia and Akshay Kumar Mahato, Advocates for the Appellant; Ajit Kumar, AAG and Kumar Sundaram, JC to AAG, Advocates for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.—All these Writ Petitions (Tax) have been preferred for different years, but mainly for refund of the Purchase tax i.e. sales tax paid by the petitioner on purchase of raw materials by it from M/s. Tata Motors Limited. Other prayers have been made for payment of interest upon the refund amount and for declaration that petitioner's right to claim refund of Purchase tax is not dependent upon issuance of Excess Demand Notice under Section 42 of the Bihar Finances Act, 1981 (as adopted by the State of Jharkhand).

2. Learned counsel for the petitioners in all the aforesaid writ petitions have submitted that main lead matter has been treated as W.P. (T) No. 1908 of 2013 because the points raised in rest of the petitions are similar, but, they are writ petitions of different years, except this, there is no other difference, therefore, W.P. (T) No. 1908 of 2013 is treated as a lead matter.

3. Learned counsel for the petitioner has heavily relied upon the decision rendered by the Hon'ble Supreme Court in Special Leave to Appeal (Civil) Nos. 2037520376/2000 dated 28th March, 2001 as submitted that the claim of refund of the writ petitioner has already been crystallized by the Hon'ble Supreme Court. This judgment is read with the judgment delivered by the Division Bench of this Court dated 31st July, 2003 in W.P. (T) No. 2587 of 2003, to be read with

the decision rendered by the Hon''ble Supreme Court reported in State of Jharkhand and Others Vs. Tata Cummins Ltd. and Another, and even interlocutory application preferred by the State in the Civil Appeal No. 10272 of 2003, which has been disposed of by the Hon''ble Supreme Court. It is submitted by the learned counsel for the petitioner that refund applications were preferred which are at Annexure 8 onwards to the W.P. (T) No. 1908 of 2013, but the respondent authorities have not decided the same and has not, therefore, refunded the purchase tax i.e. sales tax paid by this petitioner on purchase of raw materials from M/s. Tata Motors Limited for different years. Averment has also been made in the writ petition that the purchase tax was paid from the pocket of the petitioner and the same has not been realized by the petitioner from its customer and, hence, there is no question of any unjust enrichment, whatsoever arises and, therefore, this amount may be increased and the interest paid on purchase tax may be refunded by this Court by issuing necessary writ of Mandamus.

4. Learned counsel appearing for the State has submitted that the applications of the writ petitioner have been preferred for different years, which is at Annexures 8 and 9 and similar are the applications in other writ petitions which are annexed. The State has also replied the same that there are certain documents which are required before finalizing the applications for refund of the purchase tax i.e. sales tax paid by the petitioner upon the raw materials purchased by it. One of such letter is at Annexure 13 to the W.P. (T) No. 1908 of 2013 and similar are the replies annexed in other writ petitions. It is further submitted by learned counsel for the respondent State that letter of the Government has been replied by the petitioner. Thus, the fact remains that the applications for refund of the purchase tax are pending before the Joint Commissioner of Commercial Taxes (Administration), Jamshedpur Division, District East Singhbhum, who is respondent no. 2 to this writ petition and, therefore, he shall decide the applications within stipulated time given by this Court, in accordance with law. It is also submitted by the learned counsel for the State that the judgments referred by the learned counsel for the petitioner are binding to the respondent State. Nonetheless, in the matter of refund, it is not automatic that whenever there is Excess Demand of Tax, mechanically the same has to be refunded. In fact, there is bound to be applications for refund by the assessee, supported by necessary documents thereafter the same has to be decided by the respondent authorities and, thereafter, refund can be given. In the facts of the present case, as stated by the learned counsel for the respondents that the applications of refund preferred by the petitioner for different years are pending before respondent no. 2, who is Joint Commissioner of Commercial Taxes (Administration) and, therefore, these petitions are prematured in nature. No adverse order has been passed by the respondent State against the petitioner and, hence, these petitions may not be entertained by this Court, at this stage and let a suitable direction be given to respondent no. 2 to decide the refund applications within stipulated time, in accordance with law.

5. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that it is the case of the petitioner that they have purchased tax i.e. sales tax on purchase of raw materials to the respondent State, thereafter, several litigations have been taken place between the parties. Counsel has reiterated upon several decisions as stated hereinabove and has submitted that the petitioner is entitled to refund of purchase tax for which the petitioner has preferred applications for refund based upon the Bihar Industrial Policy, 1995 as the exemption was granted by the said policy for 8 years to the new industrial units i.e. from 1st January, 1996 to 31st March, 2003 by virtue of the Bihar Industrial Policy, 1995. The petitioner has entitled to exemption from the payment of the purchase tax. There was one more incentive about exemption from payment of sales tax, but, there is no dispute about sales tax.

6. Initially, it appears that a dispute was raised that the petitioner had no valid lease in its favour which was one of the condition for grant of exemption under the Bihar Industrial Policy, 1995, therefore, the petitioner preferred writ petition being C.W.J.C. No. 2689 of 2000 which was dismissed by the Division Bench and Special Leave to Appeal (Civil) No. 20375 of 2000 and 20376 of 2000 was preferred before Hon"ble the Supreme Court. Meanwhile, the question was prevailed upon the Government and they had reviewed the order passed by the Deputy Commissioner of Commercial Taxes and as the process of refund was going on and the Hon"ble Supreme Court remanded the matter to the Government and ultimately the Government has rejected the claim of exemption of the petitioner under the Bihar Industrial Policy, 1995 vide order dated 24th May, 2003.

7. Second round of litigation was started. W.P. (T) No. 2587 of 2003 was preferred by the petitioner against the decision taken by the Joint Commissioner of Commercial Taxes (Administration) and the High Court has held that the petitioner was entitled to benefit under the Bihar Industrial Policy, 1995. The State has challenged the said decision in the Special Leave Petition which was dismissed by the Hon"ble Supreme Court vide order dated 24th March, 2006 reported in State of Jharkhand and Others Vs. Tata Cummins Ltd. and Another, . The State preferred interlocutory application for clarification about additional tax and surcharge and the Hon"ble Supreme Court has held that such controversy was never raised by the State. Thereafter, the petitioner filed an application to Tata Motors Limited for refund of the purchase tax dated 26th July, 2010 and Tata Motors Limited informed the petitioner that it has already deposited the amount of purchase tax before the Government and, hence, they can claim refund directly from the State Government. The communication of Tata Motors is dated 27th July, 2010.

8. In view of this communication from Tata Motors to the petitioner, the present petitioner had preferred an application for refund before the Joint Commissioner of Commercial Taxes (Administration), who is respondent no. 2 in the writ

petition. The refund applications are dated 16th September, 2011.

9. It further appears that there is communication between respondent no. 2 and the petitioner about defects in the refund applications preferred by the petitioner for different years that refund applications have not been filed in statutory Form no. XX and the Excess Demand Notice under statutory Form no. XV has not been annexed with the application form. It further appears with annexure of the writ petition that a detailed and longish reply has been given by the petitioner that there is no need to prefer refund application in Form no. XX and there is no need of annexing the Excess Demand Notice with the refund application preferred by the petitioner and, thereafter, the petitioner has approached this Court for issuance of writ of Mandamus.

10. Thus, it appears that already refund applications are preferred by the petitioner for different years before the Joint Commissioner of Commercial Taxes (Administration) has raised certain objections which have also been replied by the petitioner. These are at Annexures-9, 11, 13 and 14 to the writ petition, which also includes the representation for refund, but the fact remains that the applications are yet to be decided by the Joint Commissioner of Commercial Taxes (Administration), who is respondent no. 2. It appears that the writ petitions have been preferred against the inaction on the part of the State for deciding the refund applications. Learned counsel for the petitioners have submitted that the claim of the petitioner is so crystal clear that there is no option with the Joint Commissioner of Commercial Taxes (Administration), but to pass order in favour of the petitioner and as he is not passing the order of refund and as he is not refunding the money, these writ petitions have been preferred. Thus, it appears that the matters are pending before the Joint Commissioner of Commercial Taxes (Administration) and the Government has also filed an affidavit in this writ petition and stated that the writ petitions are pre-matured in nature and, therefore, learned Additional Advocate General appearing on behalf of the State has rightly submitted that there is need to give suitable direction to respondent no. 2 to decide the claim of the petitioner and for refund of purchase tax, as per Bihar Industrial Policy, 1995. However, the petitioner may be sure in succeeding the refund applications pending before respondent no. 2 and howsoever tall may be the claim of the petitioner, but respondent no. 2 has yet to decide these refund applications. We therefore direct respondent no. 2 to decide the refund applications preferred by the petitioner for different years at the earliest, as expeditiously as possible and practicable, preferably within a period of twelve weeks from the date of receipt of a copy of the order of this Court. These refund applications will be decided by respondent no. 2, in accordance with law, rules, regulations and Governmental policy, applicable to the petitioner and also keeping in mind the decision rendered by the Hon'ble Supreme Court, including which are referred in the writ petition with the annexures. It is submitted by the learned counsel for the State that they shall not ask for any unnecessary adjournments during hearing of the refund applications, before respondent no. 2.11. These writ petitions are, therefore,

disposed of, in view of the aforesaid observations and directions.