

(2011) 06 JH CK 0048
In the Jharkhand High Court
Case No : Writ Petition (T) No. 2383 of 2011

Tata Cummins Ltd.

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-06-2011

Acts Referred:

Citation : (2011) 06 JH CK 0048

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

Bench : Division Bench

Advocate : Sumit Gadodra, for the Appellant; Rajesh Shankar, S.C.I., for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.
2. The Petitioner claiming itself to be entitled to the benefit under Government of Bihar order dated 22nd December, 1995 issued vide S.O. Nos. 478 and 479 of Tax Exemption under Bihar Sales Tax Act, preferred writ petition before this Court and the said writ petition of the Petitioner ultimately decided by the Division Bench of this Court in W.P. (T) No. 2587 of 2003 vide order dated 31 July, 2003 holding therein, that the Petitioner was entitled to tax exemption under S.O. Nos. 478 & 479. However, during challenge to action of the Respondents denying exemption to the Petitioner from the said tax, amount of Rs. 54.5 Crores were recovered from the Petitioner and it is admitted fact that said amount was paid by the Petitioner from its own pocket and had not been charged from the customers so as to pass on the said tax liability upon the customers. Vide judgment dated 31 July, 2003 delivered in W.P. (T) No. 2587 of 2003, this Court after allowing the writ petition and quashing the order passed by the Joint Commissioner of Commercial Taxes, directed to refund the amount of Rs 54.5 Crores to the Petitioner company and authorities of the Commercial Taxes Department under the Bihar Finance Act were directed to adjust the refundable amount towards future tax liability of the Sales Tax of the Petitioner,

M/s Tata Cummins Ltd. i.e. for the accounting year commencing from 1st April, 2004.

3. It appears from para-26 of the judgment referred above that the said adjustment was sought by the Petitioner itself and the request of the Petitioner's counsel has been recorded in para-26 of the judgment dated 31st July, 1993, showing its willingness to have adjustment of the said amount against the future tax liability of the Petitioner. The suits judgment passed by the Division Bench of this Court dated 31st July, 2003 was challenged by the State by preferring Civil Appeal No. 10272 of 2003 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its interim order dated 26th March, 2004 directed that only amount of Rs. 40.00 Crores shall be adjusted against the future tax liability of the Petitioner's for the accounting year commencing from 1st April, 2004 and the balance amount shall be refunded to the Petitioner. The balance amount of Rs. 14.5 Crores have been refunded to the Petitioner and, therefore, Rs. 40.00 Crores remained with the Revenue for adjustment against the Petitioner's future tax liability for the accounting year commencing from 1st April, 2004.

4. The Petitioner when claimed adjustment of the above amount of Rs. 40.00 Crores against the State Sales Tax liability as well as the Central Sales Tax liability, the Revenue authorities denied the adjustment, sought against the Central Sales Tax whereas allowed the adjustment of Rs. 14,65,20.147/- against the State Sales Tax liability out of 40.00 crores rupees for the accounting year commencing from 1st April, 2004. The rest of the amount is still lying with the State authorities for adjustment. The reason given for its dis-allowance by the Assessing authority in the Order dated 1st July, 2008; by the Appellate authority in the order dated 17th July 2009 and by the Tribunal in the order dated 16th March, 2011 is that since the Petitioner's claim for exemption under the Notification S.O Nos. 478 & 479 was pertaining to the tax exemption under the Bihar Sales Tax Act, therefore, any amount which is declared refundable to the Petitioner under provisions of the State Sales Act could have been adjusted only against the State Sales Tax and not against the Central Sales Tax.

5. Learned Counsel for the Petitioner submitted that interpretation given by the Revenue is absolutely illegal and unjust and also contrary to the judgment of this Court which has been upheld on this issue by the Hon'ble Supreme Court, even after passing the interim order referred above and neither the High Court nor the Hon'ble Supreme Court had declared that the amount which has been recovered from the Petitioner illegally under the provisions of the State Sales Tax can be adjusted only against the liability of the State Sales Tax Act and not against the liability of the Central Sales Tax Act, whereas the authority under the State Act is the authority, which is acting on behalf of the Central Government also for recovery of the Central Sales Tax. It is submitted that qualifying the said adjustment only against the Sales Tax is contrary to the order given by the Division Bench of this Court which clearly directed that the amount shall be adjusted against the "Sales Tax" and has not qualified it to be adjusted against

the "State Sales Tax".

6. Learned Counsel for the Revenue vehemently submitted that the orders passed by the Assessing authority dated 1st July, 2008; the Appellate authority dated 17th July, 2009 and the Tribunal order dated 16th March, 2011 are just and valid and this fact cannot be denied that the State Sales Tax is the liability towards the State Sales Tax Act and the Central Sales Tax is the liability under the Central Sales Tax Act and both are levied against the separate nature of transaction; one is levied for intrastate sale and another levied on inter-State sale. Learned Counsel for the Respondents also submitted that Central Sales Tax is collected by the State authorities by virtue of authorization given by law on behalf of the Central Government and it may be true that the amount collected on behalf of the Central Government under the head of Central Sales Tax is again assigned to the State Government but nevertheless it remains initially the property of the Central Government and not of the State Government. Therefore, because of this reason also the State authorities have rightly given adjustment against the State Sales Tax only by taking into account the origin of the litigation, demand, recovery and refund made in the proceedings against the State Sales Tax Act which was taken under State Sales Tax and for State Sales Tax liability.

7. We have considered the submissions of the learned Counsel for the parties and perused the facts of the case and the reasons given by the Assessing Authority, Appellate Authority and the Tribunal in the impugned orders.

If appears that all the three authorities failed to appreciate the nature of the money as it was on 31st July, 2003 and, therefore, even after quashing of the demand under the State Sales Tax Act by the Division Bench of this Court as upheld by the Hon''ble Supreme Court, they proceeded under assumption that the money which was the property of the Petitioner still contains a tag and label of money of the State Sales tax dues by misinterpreting the judgment of this Court dated 31st July, 2003 passed in the writ petition against the present Respondents. The initiation of the proceeding under State Act may had colour of liability under State Act and for State Sales Tax but it was so as till it was declared to be illegal by order of this Court and, in fact, from the day when the money was deposited by the Petitioner under threat of law of the State Sales Tax Act, it was a wrong plea of the Respondent-State that this amount was adjusted against State Sales Tax liability and, therefore, from the date when it was in the hands of the State it Was the property of the Petitioner, though in possession of State against purported State Sales Tax liability. At no stretch of imagination, it can be said that on or after 31st July, 2003 the amount of Rs. 40.00 Crores which was lying with the State Government had any colour of liability under the State Sales Tax Act and after the interim order passed by the Hon''ble Supreme Court on 26th March, 2003 the property lost it's tag of liability under any heading, may it be State Sales Tax or may it be Central Sales Tax and it became the property of the Petitioner. A money can be adjusted by the recipient only

according to the dictate of the owner of the money and recipient has no authority to adjust and appropriate the money against the dictate of the owner of the money unless it is agreed by contract or it is provided by the Statute.

8. Therefore, the Revenue had no jurisdiction to dictate its term for adjustment of the money and if the Petitioner himself wished to get adjustment of his own money against it's Tax-liability then on the day when liability has been created by the assessment order against the Petitioner with respect to the State Sales Tax and Central Sales Tax, the Petitioner had right to opt for seeking adjustment of the amount as per its wishes against the arrear of its tax liability i.e. against State Tax as well as Central Tax.

9. There is force in the submission of the learned Counsel for the Petitioner that the Division Bench of this Court has not qualified the amount to be-adjusted only against the State Sales Tax liability and simply because it is mentioned that the State and authorities of the Commercial Taxes Department under the Bihar Finance Act shall adjust the refundable amount towards the Sales Tax due from the Petitioner for the year commencing from 1st April, 2004, it cannot be inferred that Petitioner wished or the Court has ordered for adjustment of tax against State Sales Tax only. It is admitted case that the assessment orders for State Sales Tax as well as Central Sales Tax are passed by the authority under the Bihar Finance Act and they are only the collecting agent for the sales tax, leviable under the Central Sales Tax. Therefore, even the authority under Bihar Finance Act covers both the authorities, the authority who can give adjustment of the Sales Tax against the State Sales Tax as well as the Central Sales Tax. Therefore also the Court passed the order against the authority under the State Sales Tax to give adjustment of the amount of the assessment. Certainly the authority ought to have adjusted the amount of the Petitioner lying with the Department, according to the wishes of the Petitioner.

10. In view of the above reasons, the impugned orders dated 1st July, 2008; 17th July, 2009 and 16th March, 2011, in relation to the issue decided by this Court, are set aside and Respondents are directed to give adjustment of the balance amount which has not been adjusted against the tax liability of the Petitioner for the year commencing from 1st April, 2004.

11. The writ petition is, accordingly, allowed to the extent indicated above.