**(2013) 01 JH CK 0119**

**In the Jharkhand High Court**

**Case No :** Writ Petition (T) No. 508 of 2013

TATA Motors Ltd. and Another — APPELLANT

Vs

Union of India and Others — RESPONDENT

**Date of Decision :** 29-01-2013

**Acts Referred:**

**Citation :** (2013) 293 ELT 321

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

**Bench :** Division Bench

**Advocate :** S.K. Kapoor, Mr. Sumeet Gadodia and Mr. Atish Ghosh, in W.P. T Nos. 508, 443, 516 and 518/2013 and Mr. M.S. Mittal, in W.P. T No. 516/2013, for the Appellant; Deepak Roshan, Senior Standing Counsel (I.T.), Mr. Ratnesh Kumar, Senior Standing Counsel (C.E.), Mr. Amit Kumar and Ms. Rupa Kumari Advocate, for the Respondent

## Judgement

1. All the petitioners are aggrieved against one Communication dated 01.01.2013 issued by the Ministry of Finance, Department of Revenue and particularly, the Central Board of Excise and Customs, New Delhi, whereby it has been conveyed to the concerned authorities that proceedings for the recovery shall be initiated for the confirmed demand in terms of the guidelines: given in the chart prescribed under para-2 of the said communication. Presently, we are concerned with the cases where appeals have been filed with a stay application against the order in original and all the petitioners'' contention is that since the Bench is not constituted because of the vacancy, neither the petitioners'' appeals nor the stay petitions can be considered by the Tribunal or the appellate authority. In view of the Communication dated 01.01.2013, only the demand notices have been issued to the petitioners directing them to make payment of the arrears amount immediately, obviously, of the confirmed demand in terms of the original order. Learned senior counsel for the petitioners, Shri S.K. Kapoor, vehemently submitted that there are total 66,590 cases pending before the various Benches of CESTAT as on 31.10.2011, which, according to the petitioners, is gathered from INTERNET, copy of which has been annexed with

the W.P. (T) No. 508 of 2013 as annexure-3. Learned senior counsel for the petitioners submitted that there cannot be a mechanical decision to initiate recovery proceedings 30 days after filing of the appeal, if no stay is granted. It is submitted that it depends upon the appellate authority/Tribunal as to when appellate authority/Tribunal can take-up the matter even for grant of interim relief. It is also submitted that in one side by Communication dated 01.01.2013, directions have been issued to the authorities to initiate recovery proceedings, 30 days after filing of the appeal, if stay is not granted, but at the same time, no safeguard has been provided to bonafide litigant to protect itself from such harsh order of recovery in a case when order in original is absolutely illegal for which the appeal has already been preferred and stay has already been prayed but no one is there to hear the matter. Learned senior counsel for the petitioners placed before us several orders passed by the several High Courts in the month of January, 2013 itself which includes the order of a Division Bench of Andhra Pradesh High Court, dated 09th January, 2013, delivered in the case of Ultratech Cement Ltd. vrs. Union of India and others; the order of a Division Bench of Madras High Court, dated 18th January, 2013, delivered in the case of Bonfiglioli Transmission Pvt. Ltd. vrs. The Commissioner of Central Excise, Chennai and others; the order of a Division Bench of Bombay High Court, dated 17th January, 2013, delivered in the case of Uhde India. Private Limited vrs. Union of India and others and the order of a Division Bench of Rajasthan High Court, dated 21st January, 2013, delivered in the case of RSWM Ltd. vrs. Union of India and others. In alt these cases, the recovery proceedings have been stayed upon finding that the concerned Bench is not constituted so as to hear the appeal or to pass any order on the stay petition.

2. A Division Bench of this Court (both of us are member), in W.P. (T) No. 392 of 2013 with W.P. (T) No. 393 of 2013, had occasion to consider the issue in detail in the case of Tata Hitachi Construction Machinery Company Limted Vrs. The State of Jharkhand and others. Tata Hitachi Construction Machinery Company Ltd. case was related to the Revisional Authority namely, Commissioner-cum-Secretary, Commercial Taxes Department, Ranchi. It has been noticed by this Court on the basis of submission of counsel for the petitioners that the Tribunals are not fixing the date of hearing of the appeal or for consideration of the application for interim relief unless the party preferring the appeal moves the Revisional Authority for fixing the date. It is also submitted that even after several efforts, the party could not even get the date from the Revisional Authority. This Court observed as under:

We are of the considered opinion that large number of cases are coming before this Court and also have come before the other High Courts which is apparent from the various orders referred above wherein the prayer for interim relief has not been considered resulting into passing of the order by the High Court against taking the coercive steps for recovery of tax amount or the demand raised by the Revenue.

 

Prima facie, we are of the considered opinion that even if the assessee who prefers the revision petition before the revisional authority has not pressed for hearing of the revision petition, even then, it is the duty of the revisional court to manage its own affairs and cannot say that because the assessee did not ask for the hearing of the revision petition or the application for grant of interim relief therefore, they were not under obligation to fix a date for hearing the revision or the application for grant of interim relief Once date is fixed and applicant will not appear then only revisional authority may pass appropriate order but revisional authority cannot wait for moving of any application for listing the revision for any order.

If this attitude is correct, then in that situation, the revision petition preferred by the revisionist may not be decided for decades because of non filing of application for fixing the date in the revision petition.

Prima facie, we are of the opinion that the courts land the tribunals are not dependent upon the zeal and the efforts of the litigant to manage their own affairs and the authority in power is supposed to manage their own affairs and to decide the cases according to their own management system uninfluenced by the inaction of the litigant that is also the theme of the National Litigation Policy and now it has been adopted by the Central Government as well as by almost all the State Government.

We are constraint to observe again here that by taking such type of objectionable attitude of non-consideration of the application for interim prayer virtually the authorities are helping the persons who want to avoid the payment of tax by compelling the court to pass interim order against the recovery or against taking coercive measures.

3. We already observed in the Tata Hitachi Construction Machinery Company Ltd. case that the situations are created for the High Courts for passing the order against the recovery or against taking coercive measures. We also observed that such Revenue authority, may be at the State level or at the Central level, used to remain silent for years together in the matter of recovery of the confirmed demand and they may choose at their wish and whims when they will pass the harsh order not asking the party to deposit the demand but order of garnishee to attach the bank account. Prima-facie, we were of the considered opinion that whenever there is a confirmed demand, that is required to be paid, but at the same time, simply a demand is created by original order, that is not the final order in a case when it has been challenged in the appeal and every litigant/ assessee has a right to pray for the interim relief in addition to prayer for quashing the demand. We were also of the Considered opinion that during pendency of litigation, it cannot be presumed that any interim order, if it is passed, then that order is against the Revenue without any reason and on that account, it cannot be declared that the appellate authority or Courts have stayed the recovery of the State or Union''s revenue. In that situation, the fact situation may be otherwise also. Upon the assessee there may be absolutely illegal

demand which is hanging over it, therefore, it may absolutely unjust to take a view only in favour of the Revenue that the stay is against the Government''s revenue which in fact protect bonafide litigant by judicious order.

4. Even in the Circular issued as back as in the year 1988, which was conveyed by the Ministry of Finance (Department of Revenue), New Delhi, that the Department is within its right to proceed with the recovery proceedings after waiting for decision on the stay application for a reasonable period, which would depend on the facts and circumstance of a particular case. It was also observed that the observations made by some High Courts and the CEGAT would not change the legal position that mere pendency of a stay application cannot be a legal bar to proceed with recovery proceedings, in the absence of a specific order against the same. A reasonable view was that the Department should wait for a reasonable period and what is the reasonable period depends upon the facts and circumstances of a particular case. We found from the facts of various cases which have come before us, that in large number of cases no steps are taken for recovery of the due amount for unreasonably long period of years and all of sudden, just before the end of financial year, recovery order and bank account attachment orders are issued for the assesses, may it is working unit with thousands of employees and running business of importance.

5. Prima-facie, we are of the considered opinion that Circular dated 01.01.2013 is incomplete in the sense that unless there is complete mechanism for hearing the stay petitions before period of 30 days, how the Circular dated 01.01.2013 can be given effect to which will tantamount to denial of the legal right to the appellants for obtaining stay because of the fault in the machinery and mechanism for consideration of the appeals and the stay petitions resulting into attachment of bank accounts etc. of running business concerns, affecting it to the extent of financial crisis.

6. In view of the above reasons, we are issuing notice to the Union of India, Ministry of Finance (respondent nos. 1 and 2) and we direct the Ministry of Finance, Department of Revenue, New Delhi to clear its stand with respect to improvement of system of hearing of the appeals/stay petitions by the appellate authority or the Tribunal within a reasonable time, in the light of the Circular dated 01.01.2013 for consideration of the prayer for interim relief before 30 days from the filing of the appeal. The mechanism for deciding the cases of the Revenue require priority in the interest of the nation and since we are coming across several matters where the prayer is only for interim relief in the writ jurisdiction, when the original appeal is pending before the appellate authority or before the Tribunal, and virtually making the High Courts the courts of hearing the application for interim relief when the main matter will be decided by the appellate authority or the Tribunal, the High Courts in the entire India appear to have heavily been burdened because of the lack of infrastructure in appellate or Tribunal level. Therefore, the respondent-Ministry of Finance, Department of Revenue, New Delhi is required to disclose what steps it has taken or is likely to

 

take for the purpose of hearing of the appeal and the stay petition by the respective authorities and, thereafter, the effect to the Communication dated 01.01.2013 can be given.

7. Be that as it may, in these cases, admittedly, the authority, who can pass the interim order is non-functional because of the vacancy and, therefore, even if legitimate cases for grant of interim order is there, no interim order can be obtained by the assessee-petitioners and in the light of the orders referred above, the respondents are restrained from recovering any amount under challenge in the appeal.

8. We are making it clear that this order will be effective till the petitioners'' applications, at least, for interim relief, if the appeal itself cannot be decided, are decided by the appellate authority/Tribunal.

9. Since learned counsel for the respondent nos. 3 and 4 are present, there is no need to issue notice to respondent nos. 3 and 4.

10. A copy of these petitions may be given to learned ASGI, appearing for respondent nos. 1 and 2. List these matters on 26.02.2013.