(2015) 02 JH CK 0043

In the Jharkhand High Court

Case No : Writ Petition(T) No. 4260 of 2014

Tata Steel Limited	APPELLANT
Vs	
State of Jharkhand and Others	RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Citation : (2015) 3 AJR 618

Hon'ble Judges : Pramath Patnaik, J.;Dhirubhai Naranbhai Patel, J.

Bench : Division Bench

Advocate : M.S. Mittal, Senior Advocate, A.R. Choudhary and Shilpi John, for the Appellant; Rajesh Shankar, G.A. and Abhay Prakash, J.C. to G.A., Advocates for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.—This petition has been preferred against the order passed by the Commercial Taxes Tribunal Jharkhand, Ranchi in Review Case No. J.R. 08/2012 order dated 14.2.2013 which is at Annexure-7 to the memo of this petition whereby learned Tribunal has confirmed the order passed by the very same Tribunal dated 11.11.2009 in a Revision Case No. J.R. 1392/2001, for the assessment year 1992-93 under the Central Sales Tax Act, 1956.

2. Counsel appearing for the petitioner argued out the case at length and has submitted that the respondent-State has presumed the several transactions as inter-state sale, without appreciating the fact that from the manufacturing place of Jamshedpur, in fact the movements of goods in question have never taken place from one State to another State. At the relevant time in the year 1992-93, in the erstwhile State of Bihar the movements of the goods in question were from Jamshedpur to various stockyards and to conversion agents as mentioned in paragraph No. 13 of the impugned order. For the ready reference, paragraph No. 13 of the impugned order reads as under:

"13. The month-wise statement of despatches furnished by the petitioner during 1992-93 to the DCCT, Urban Circle, Jamshedpur on which basis the total despatch figure was worked out of 1848546.561 MT itself indicated that the despatches within the State was for 169315.682 MT which besides despatches to Indian Steel and Wire Product, Jamshedpur (40491.060 MT) included despatches to:-

3. It is further submitted by counsel appearing for the petitioner that out of the aforesaid dispatches of goods within the erstwhile State of Bihar, the respondents have presumed these movements of the goods as inter-state sale in absence of certain evidences on record including Form ''F''. In fact for the sale, there must be minimum two persons, one is seller another must be purchaser. Whenever the goods transferred from place of manufacturing to the stockyard, there is no change in ownership neither the said transaction can be termed as a sale nor in the said transactions there is any transfer of the ownership of the goods. Counsel for the petitioner has taken this Court to various provisions of the Acts and Rules about the Central Sales Tax Act, 1956, Bihar Finance Act, 1981 and the Rules made thereunder. There are lot of rounds of litigations between these parties and several orders have been passed one after another. Now, the disputes are confined to the extent that even in absence of any evidence about the transactions by this petitioner within the erstwhile State of Bihar whether the respondent-State can presume it that they were the transactions covered by the words "Inter-State Sale". This presumption is not permissible in the eyes of law and, therefore, counsel for the petitioner fairly submitted that these transactions which have been stated herein above in paragraph No. 13 of the impugned order, even in absence of any evidence on record, at the highest, the State can presume it as intra-state sale, otherwise, the burden will be upon the State to prove movements of the goods from one State to another under Section 3-A of the Central Sales Tax, 1956. Petitioner will be satisfied, if, the State is accepting the transactions stated in paragraph No. 13 of the impugned order as intra-state sale and the tax leviable will be at 4% of the sale price, whereas, the respondent-State has presumed those transactions as interstate sale and has levied and collected, in breach of several provisions of the Act, including Bihar Finance Act, 1981, and in breach of Central Sales Tax, 1956 and the Rules made thereunder at the rate of 8%. This amount of 8% of tax has also been realized by coercive methods and, therefore, if the State is accepting these contentions that the transactions stated in paragraph No. 13 of the impugned order as intra-state sale the remaining 4% of the amount may be ordered to be refunded to the petitioner or the said amount may be adjusted for future liability of the petitioner towards the Value Added Tax or Central Sales Tax or both.

4. Counsel for the petitioner has also taken to this court to various Annexures and has raised several contentions, but, at this stage these contentions are not required to be noted down looking to the fair arguments canvassed by the respondent-State.

5. Counsel appearing for the respondent-State has argued at length and has submitted that on the basis of the evidences on record the transactions of the goods in question, specially from Jamshedpur to Patna stockyard can be treated

as Intra-State sale. So far as, other stockyards and conversion agents are concerned there is no evidence laid by the petitioner and, therefore, the respondent-State had levied Central Sales Tax presuming that the remaining stock must have been sold away in another State. Nonetheless, now the counsel arguing on behalf of the State has received communication from Deputy Commissioner of Commercial Taxes, Urban Circle, Jamshedpur dated 30th January, 2015, a photo copy of which is tendered to this Court as well as it is given to the counsel for the petitioner and submitted that they are ready to treat the transactions from KMCEL, Kumardubi to different regional sales offices of Tata Steel as intra-state sale and they are ready to take 4% of tax instead of treating those transactions as inter-state sale. Counsel appearing for the respondent-State further submitted upon instruction from Deputy Commissioner of Commercial Taxes, Urban Circle, Jamshedpur, Mr. Sita Ram, Son of Late Ram Lakshan who is present in the Court, that if the movements of the goods is within the erstwhile State of Bihar the same treatment will be given to the dispatches of the goods as referred in paragraph No. 13 of the impugned order. It is further submitted by the counsel for the respondent-State upon instruction from the very same officer that the State shall not presume inter-state sale of the dispatches of all the goods which are referred in paragraph No. 13 of the impugned order and, therefore, it is submitted by the counsel for the respondent-State that with these observations, let the matter be remanded to the Deputy Commissioner of Commercial Taxes, Urban Circle, Jamshedpur and he will decide the liability of tax in accordance with the statement made by the counsel for the respondent-State.

Counsel for the respondents has also submitted that the burden of proof is upon the assessee and he has referred various Sections including Section 21(1-A) of the Bihar Finance Act, 1981 and the Rules made thereunder.

6. Having heard counsels for both the sides and looking to the limited arguments canvassed by counsels for both the sides as stated hereinabove to the fact that the dispatches of the goods in question as stated in paragraph No. 13 now shall be treated as intra-state sale and there shall be no presumption for those dispatches of the goods for inter-state sale. It appears that the whole disputes have been brought to an end by the good office of the respondent as well as on the petitioner side, otherwise lot of issues have been involved that there is no purchaser of the goods when the goods are moved to stockyard. There is all fairness on the part of the State also that they are now ready to treat these dispatches of goods as intra-state sale instead of inter-state sale. Counsel for both the sides agreed now that there is no need to decide the issues involved in this writ petition about the applicability of Section 3-A of the Central Sales Tax Act, 1956, various Rules and burden of proof etc. as both the sides are ready to treat these dispatches of the goods as referred in paragraph No. 13 of the impugned order as intra-state sale.

7. We hereby remand the matter to the Deputy Commissioner of Commercial

Taxes, Urban Circle, Jamshedpur to decide the liability of the tax, afresh, to the extent indicated hereinabove. The tax liability will be decided by the Deputy Commissioner of Commercial Taxes, Urban Circle, Jamshedpur within a period of 90 days from the date of receipt of a copy of this order of this Court. This petitioner shall remain present either as a party in person or through his advocate or through his representative before Deputy Commissioner of Commercial Taxes, Urban Circle, Jamshedpur on 24th February, 2015 between 11.00 a.m. to 12.00 noon and thereafter the said officer will give suitable date of hearing so as to finalize the tax liability within the time stipulated hereinabove. For the amount of tax, to be refunded, to the assessee, all necessary formalities will be completed within further period of 15 days by the said officer. The State may opt either to refund or set off/adjust all the excess amount of tax, towards the liability to pay the tax by this petitioner towards VAT or CST or both.

8. We, therefore, quashed and set aside the order passed by the Commercial Tax Tribunal in Review Case No. J.R. 08/2012 dated 14.2.2013.