
(2008) 02 JH CK 0080
In the Jharkhand High Court

Tata Steel Limited

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Bihar Finance Act, 1981 — Section 45, 46(4)

Citation : (2008) 2 JCR 353

Hon'ble Judges : M.Y. Eqbal, J;D.K. Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ petition, the petitioner seeks issuance of a writ in the nature of certiorari for quashing the interlocutory order dated 31.1.2008 passed by the Commissioner of Commercial Taxes, Jharkhand, Ranchi in Revision Case No. 369 of 2007, whereby she has disposed of the stay application filed by the petitioner and ordered for stay of recovery of the demand of Rs. 1,38,33,84,081/- if the petitioner deposits 20% of the said amount i.e. Rs. 27,66,76,816/-.

2. The petitioner is manufacturer of iron and steel products having its plant at Jamshedpur. It has various Stockyards/Branch Sales Offices all over the country. For the financial year 2003-2004, returns were filed by the petitioner-company before the Assessing Authority showing the local sales, interstate sales, sales outside State and export sales. The Assessing Authority, namely the Deputy Commissioner of Commercial Taxes, Urban Circle, Jamshedpur, passed the assessment order assessing the total tax payable by the petitioner-company. The Assessing Authority finally held that a further sum of Rs. 1,38,33,84,081/- is payable by the petitioner. Consequently, a demand notice was issued. The petitioner instead of filing statutory appeal as provided u/s 45 of the Bihar Finance Act, 1981, challenged the said order by filing revision before the Commissioner under the provisions of Section 46(4) of the said Act. In the meantime, for the recovery of the tax, the Assessing Authority passed order for

attachment of the bank account of the petitioner, as a result of which, the petitioner-company filed interlocutory application before the Commissioner in the said revision case for stay of order of attachment and also for stay of recovery of the amount. The Commissioner after hearing the parties stayed the recovery of the amount assessed by the Assessing Authority on the condition of deposit of 20% of the said amount by the petitioner.

3. Dr. Devi Pal, learned senior counsel appearing for the petitioner, assailed the impugned order mainly on the ground that the Commissioner was not justified in refusing to consider the case of the petitioner on merit while considering the stay petition. Learned senior counsel submitted that the Commissioner was bound to consider the merit of the case and pass speaking order while considering the stay petition of the petitioner. Learned senior counsel submitted that since the Commissioner while passing the impugned order on the stay petition has failed to consider the question of prima facie case, balance of convenience and irreparable injury, the impugned order cannot be sustained in law. Learned senior counsel relied upon the decision of the Supreme Court in the case of Income Tax Officer v. M.K. Mohammed Kunhi 71 ITR 815, and a decision of the Madras High Court in the case of Sri Balaji Trading Co. Vs. Deputy Commercial Tax Officer and Another, .

4. Before appreciating the submissions made by the learned senior counsel, I would first like to refer the provisions of statutory appeal as provided u/s 45 of Bihar Finance Act, 1981. Section 45 reads as under:

45. Appeal.--(I) Subject to such rules as may be made by State Government under this part any dealer objecting to an order of assessment or penalty or both passed by the prescribed authority against him, or a person objecting to an order of penalty passed against him or an order u/s 27 may appeal to the Joint Commissioner or the Deputy Commissioner specially authorized in this behalf.

(2) And where an order of assessment or penalty against a dealer has been passed u/s 17 or 19 by an authority other than the prescribed one as a consequence of the proceeding having been transferred by the Commissioner under Sub-section (5) of Section 9, the dealer may appeal in the prescribed manner to the authority next above the officer passing that order not being an authority below the rank of a Joint Commissioner.

(3) No appeal under Sub-section (1) or (2) shall be admitted unless the dealer objecting to an order of assessment has paid twenty per centum of the tax assessed or full amount of admitted tax whichever is greater.

(4) Every appeal under this section shall be filed within forth-five days of the receipt of the notice of demand but where the appellate authority is satisfied that the appellant had sufficient reason for not preferring appeal within time, it may condone the delay.

(5) The appellate authority while disposing of an appeal against an order, other

than an order u/s 27, may

- (a) (i) Confirm, annual, reduce, enhance or otherwise modify such order; or
- (ii) Set aside the order directing the authority below to make fresh order after further enquiry on points as may be directed; and
- (b) in other cases pass such order as it may, for reasons to be recorded in writing, deem fit.

(6) No order under this section shall be passed without giving reasonable opportunity of hearing to the appellant as also the authority whose order has been appealed against.

(7) Any appeal or proceeding relating thereto filed and pending before the Deputy Commissioner since before the coming into force of this part will be deemed to have been filed and/or transferred to the Joint Commissioner or before the Deputy Commissioner specially authorized in this behalf to hear and dispose of the same, and any appeal relating to a period prior to the coming into force of this part shall after the enforcement of this part be filed before the Joint Commissioner or Deputy Commissioner specially authorized in this behalf.

5. From bare perusal of the aforesaid provision, it is clear that statutory appeal has been provided against the order of assessment or penalty passed u/s 17 or 19 of the Act. Sub-section (3) of Section 45 clearly speaks that such appeal filed against the assessment order shall not be admitted unless the dealer objecting the assessment order has paid 20% of the tax assessed or full amount of admitted tax whichever is greater.

6. Section 46 contemplates the circumstances under which an order can be challenged before the Commissioner by filing a revision. Section 46 reads as under:

46. Revision.--(I) Subject to such rules as may be made by the State Government an order passed on an appeal under Sub-section (1) or (2) of Section 45 may, an application, be revised by the tribunal.

(2) Subject as aforesaid any order passed under this part or the rules made there under, other than an order passed by the Commissioner under Sub-section (5) of Section 9 or an order against which an appeal has been provided in Section 45 may, an application be revised

(a) by the Joint Commissioner, if the said order has been passed by an authority not above the rank of Deputy Commissioner; and

(b) by the tribunal if the said order has been passed by the Joint Commissioner or Commissioner.

(3) Every application for revision under this section shall be filed within sixty days of the communication of the order which is sought to be revised, but where the authority to whom the application lies is satisfied that the applicant had

sufficient cause for not applying with time, it may condone the delay.

(4) The Commissioner may at any time but before the expiry of four years from the date of the order, either on his motion or on application, call for and examine the record of any proceeding in which any order has been passed by any other authority appointed u/s 9. for the purpose of satisfying himself as to the legality or propriety of such order and may, after examining the record and making or causing to be made such enquiry as he may deem to be necessary, pass any order which he thinks proper:

Provided that where an application is filed seeking revision of any order, such an application shall be entertained only if made within ninety days of the communication of the order sought to be revised.

(5) No order under this section shall be passed without giving the appellant as also the authority whose order is sought to be revised or their representative, a reasonable opportunity of being heard.

(6) Any revision against an appellate order filed and pending before the Joint Commissioner or a revision against any other order filed and pending before the Deputy Commissioner since before the enforcement of this part shall be deemed to have been filed and/or transferred respectively to the tribunal and Joint Commissioner, and any revision relating to a period prior to the enforcement of this part against an appellate order, or against any other order passed by an authority not above the rank of Deputy Commissioner shall, after the enforcement of this part, be respectively filed before the tribunal and the Joint Commissioner.

7. From bare reading of the aforesaid provision, particularly Sub-section (4) of Section 46, it is clear that Commissioner has power to call for and examine the record of any order passed by any sub-ordinate authority for the purpose of satisfying himself to the legality or propriety of such order and to pass such order as he deems fit. The power of revision has been conferred by the statute on the Commissioner to see that its sub-ordinate authority keep themselves within the bounds of law and to examine the correctness, legality and propriety of the orders.

8. Be that as it may. the only question that falls for consideration at this stage is as to whether Commissioner has exceeded its jurisdiction in directing the petitioner/assessee to deposit 20% of the total amount as a condition for stay for recovery of the total amount assessed by the assessing authority.

9. As noticed above, there is a statutory appeal provided u/s 45 of the Act. Instead of availing the remedy of appeal and without assigning any reason the petitioner preferred revision u/s 46(4) of the Act. Admittedly, for entertaining revision the petitioner is not required to deposit 20% of the total amount of tax as assessed by the assessing authority unlike entertaining appeal under the Act. Petitioner moved an interlocutory application in the revision for stay of the recovery of the demand. The Commissioner in exercise of its discretionary power

stayed the order of attachment and recovery of demand on the condition that petitioner/assessee shall deposit 20% of the total assessed tax.

10. Petitioner put reliance on the decision of the Supreme Court in the case of Income Tax Officer v. M.K. Mohammed Kunhi 71 ITR 815. In that case the question that came for consideration before the Supreme Court was as to whether the Income Tax Tribunal has power under the relevant provision of Income Tax Act to stay the recovery of realization of penalty imposed by the departmental authorities on an assessee during the pendency of the appeal. The Supreme Court held that the power of stay is not likely to be exercised in a routine way or as a matter course unless strong prima facie case is made out. It was further held that stay will be granted only in deserving and appropriate case where the tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal. With due respect the ratio decided by the Supreme Court in that case will not be of any help of the petitioner.

11. The next decision on which petitioner put reliance is the case of Sri Balaji Trading Co. Vs. Deputy Commercial Tax Officer and Another, . In that case the Madras High Court has considered the power of appellate authority in the matter of grant of stay. The Court observed:

On a consideration of the above principles enunciated in the various decisions, I feel that the appellate authority is expected to consider the following aspects at the time of passing an order on a stay petition (1) whether there is a prima tunic case in favour of the assessee; (2) the amount of tax and penalty involved in the appeal: (3) the capacity of the assessee to pay the amount; (4) undue hardships to the assessee and (5) nature of security offered by the assessee. It is made clear that while considering the above aspects, the authority must have also in mind the adverse effect that would be caused on the public revenue in case of granting an absolute stay. Of course, this should not be the primary concern. But the other factors should be considered in this background. After having considered the above aspects, the appellate authority, in exercise of his discretion, can grant any one of the following reliefs : (1) absolute stay on security of bank guarantee; (2) conditional stay on payment of a portion of the tax; (3) permission to pay in installments; and (4) refusing to grant stay. It is a matter of discretion on the part of the appellate authority to grant stay or not to grant stay. But, in either case, it should give reasons as, otherwise, there will be no indication about application of its mind to the request made by the assessee. Once discretion is exercised in the said manner, this Court will not normally interfere with such discretion.

12. From the ratio of the decision relied upon by the petitioner and referred to herein above, it transpires that the scope, ambit and power of the appellate authority in the matter of granting interim stay has been dealt with.

13. In the instant case, as noticed above, inspite of remedy of statutory appeal

provided under the Act, the petitioner circumventing the said provisions, filed revision before the Commissioner so that petitioner may not have deposited required amount for entertaining appeal. In the matter of exercise of power for passing interim order specially in revenue matters, the Supreme Court in the case of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, has discussed in detail and held that where matters of public revenue are concerned, interim order ought not to be granted merely because the prima facie case has been shown. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the public interest. The Supreme Court repeatedly deprecated the practice of granting interim order against the interest of public revenue.

14. Coming back to the impugned order the Commissioner in exercise of her discretionary jurisdiction judiciously granted stay of the impugned assessment order on the condition that atleast petitioner deposited a sum equal to 20% of the said amount i.e. Rs. 27,66,76,816/- , we do not find any illegality or Impropriety in the impugned order as the same is in the spirit of the various provisions of Finance Act.

We do not find any merit in this writ petition, which is, accordingly, dismissed.

D.K. Sinha, J.

15. I agree.