(2006) 11 JH CK 0022

In the Jharkhand High Court

Case No : Writ Petition (T) No. 5054 of 2006

Tata Steel Limited APPELLANT

Vs

The State of Jharkhand RESPONDENT

Date of Decision : 03-11-2006

Acts Referred:

Bihar Finance Act, 1981 — Section 19, 46, 46(4)
Bihar Sales Tax Act, 1944 — Section 17(2), 19(1)
Central Sales Tax Act, 1956 — Section 19(2)(2A)
Central Sales Tax Rules, 1957 — Rule 12

Citation : (2007) 1 JCR 447 : (2007) 8 VST 236

Hon'ble Judges : M. Karpaga Vinayagam, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Debi Pal, M.S. Mittal, A.R. Choudhary, A. Mazumdar and A.N. Sen, for the Appellant; K.K. Jhunjhunwala, G.P, III, for the Respondent

Final Decision : Dismissed

Judgement

1. 5.11.2006: Petitioner has challenged the reassessment order passed in Case No. 491 of 2005-06 (Annexure-12) under the provisions of the Central Sales Tax Act (C.S.T. for short) relating to the period 1993-94 passed by the Deputy Commissioner of Commercial Taxes (respondent No. 5) and also the order dated 19.7.2006 (Annexure-14) passed by the Joint Commissioner of Commercial Taxes (Appeal) (respondent No. 4) dismissing the appeal against the aforesaid order-Annexure 12.

2. Dr. Debi Pal appearing for the petitioner submitted that a concluded assessment order passed in 2001 under the C.S.T. has been reopened and reassessment order has been passed without serving a valid notice u/s 19 of the Bihar Finance Act and, as such, the impugned orders are without jurisdiction.

3. On the other hand, Mr. Jhunjhunwala, appearing for the respondents, submitted that the impugned orders were passed after serving notice on the petitioner pursuant to and for giving effect to the order of remand passed by the

appellate authority on 23.12.2004 (Annexure-7).

4. In view of the submissions made by Dr. Pal, the main question involved in this writ petition is whether the impugned orders are liable to be set aside for want of valid notice?

5. On 14.3.1998 two assessment orders were passed for the year 1993-1994 under C.S.T. and Bihar Sales Tax Act (B.S.T. for short) Annexure-1 and 2 respectively. Petitioner preferred two appeals against the said orders. The dispute was with regard to the amount of intra-state and inter-state sales. Both the appeals were disposed of by a common order dated 22.1.2000 (Annexure-3). The appellate authority remanded the matter with certain observations and giving opportunity to the petitioner to place its case. Two revised assessment orders were passed on 19.3.2001 under C.S.T. and B.S.T. (Annexure-4 & 5 respectively). Under B.S.T., petitioner was directed to deposit the assessed tax and under C.S.T. excess payment was assessed. Petitioner filed appeal against the said order passed under B.S.T. The main dispute was with regard to the tax assessed on the stock transferred to K.M.C.E.L. i.e. intra-State sale/inter-State sale. Petitioner could not produce materials in support of its contentions. However, by order dated 23.12.2004 (Annexure-7), the matter was again remanded. The assessing authority was directed to examine the records of Chirkunda Circle and petitioner was also directed to produce materials in support of its case. A notice dated 29.1.2005 was issued to the petitioner "Pursuant to the appellate order", followed by notices dated 3.1.2006 and 10.2.2006 (Annexure-8 series).

Petitioner did not appear pursuant to the said notices. Accordingly, two amended assessment orders were passed on 16.3.2006 under B.S.T. and C.S.T. (Annexure-9 and 12 respectively). Pursuant to the said orders, a notice showing excess payment of Rs. 67,46,653/- under B.S.T. and a notice demanding Rs. 2,12,55,752/- under C.S.T. (Annexure-10 and 11) were served. Petitioner filed an appeal against the said order passed under C.S.T. which was dismissed by order dated 19.7.2006 (Annexure-14).

6. Dr. Pal referred to the aforesaid notice dated 3.1.2006, and pointed out that the B.S.T. registration number was mentioned in the notice and clause ''KHA'' was ticked which refers to Section 17(2) of the Bihar Sales Tax Act and thus it was a notice under B.S.T. and not under C.S.T. He argued that if the assessment under C.S.T. was sought to be reopened, C.S.T. registration number should have been mentioned and Clause ''JA'' which refers to Sections 17(2) and 19(1) of Bihar Sales Tax Act should have been ticked. Relying heavily on the said notice dated 3.1.2006, he contended that the concluded assessment under C.S.T., could not be reopened and the reassessment order under C.S.T. could not be passed on the basis of such notice issued under B.S.T.

7. Such contention of Dr. Pal cannot be accepted. The total turn over includes intra-State and inter-State sale and assessment of the amount of such sales is

inter-related. The petitioner filed appeal against the order of assessment under B.S.T. The dispute was with regard to intra-State/inter-State Sale/Stock Transfer. The matter was remanded directing the petitioner to produce documents in support of its contention. Pursuant to and for giving effect to order of remand, notices (Annexure-8 series) were served on the petitioner. The notices issued under the B.S.T. are equally applicable for assessment under C.S.T. in view of Section 19 (2)(2A) of the Central Sales Tax Act and Rule 12 of Central Tax (Bihar) Rules 1957.

8. From the facts and circumstances noted above it is clear that the said notices were served for reassessment under B.S.T. and C.S.T. Petitioner cannot challenge the impugned orders on the ground that no notice was served under C.S.T. for reopening/reassessment. Petitioner accepts the receipt of the said notices (Annexure-8 series). The orders of reassessment for the same financial year under B.S.T. and C.S.T. cannot be seen in isolation. Thus it has to be held that the impugned orders are not without jurisdiction for want of service of valid notice u/s 19 of the Sales Tax Act for reopening/reassessment of the assessment order passed under C.S.T. The said judgments relied by Dr. Pal are of no help to him in view of the distinguishing facts noted above.

9. On the question of alternative remedy, Dr. Pal submitted that tribunal is not functioning and, therefore, petitioner is not in a position to file revision u/s 46 of the Bihar Finance Act. Mr. Jhunjhunwala in reply submitted that petitioner can move before the Commissioner for exercising his suo motu power of revision u/s 46(4) of the Bihar Finance Act. Accordingly, it is clarified that if the petitioner chooses to move revision petition before the Commissioner, this order will not prejudice the parties, as we have not gone into the merits of the aforesaid dispute i.e. intra-State sale/inter-State sale/stock transfers.

10. Lastly Dr. Pal, referring to the supplementary affidavit, submitted that the Deputy Commissioner, Commercial Taxes, Jamshedpur is demanding the said disputed amount of tax assessed under C.S.T. and is not issuing the road permits and other statutory forms due to which the petitioner''s business is suffering everyday.

11. In the circumstances, we direct that if petitioner has paid up-to-date admitted tax, the road permits should be issued to it pending the present dispute and if it deposits Rs. 75 Lakhs without prejudice to its contention in the revision to be filed, the statutory forms should be issued to it.

12. With these observations and directions, this writ petition is dismissed.

