(2018) 06 JH CK 0088

In the Jharkhand High Court

Case No : Writ Petition (T) No.1034 of 2018

Usha Martin Ltd APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 25-06-2018

Acts Referred:
Finance Act, 1994 — Section 66B

Citation : (2018) 06 JH CK 0088

Hon'ble Judges : AMITAV K. GUPTA, J;D.N. PATEL, J

Bench : Division Bench

Advocate : Sumeet Gadodia, Ratnesh Kumar

Final Decision : Dismissed

Judgement

D.N. Patel, A.C.J

1. This Writ Petition has been preferred for the following reliefs :-

â??(i) For issuance of an appropriate writ, order, direction, including Writ of Declaration declaring that no Service Tax is leviable under Section 66B

of the Finance Act, 1994 on the amount of royalty paid by the petitioner to the State of Jharkhand towards use of mineral resources (i.e. by way of

mining lease). (ii) For issuance of a further appropriate writ/ order/ direction, including Writ of Mandamus, restraining the Respondents from

demanding Service Tax under the provisions of the Finance Act, 1994 on the amount of royalty paid by the petitioner to the State of Jharkhand

pursuant to mining lease granted in favour of the petitioner for excavation of iron ore in respect of its mines located in Barajamda in the District of

West Singhbhum.

(iii) For issuance of further appropriate writ/ order/ direction, including Writ of

Declaration, that 'Royalty' is in the nature of 'Tax' and, thus, cannot be

deemed to be a consideration in respect of alleged services provided by the State Government pertaining to the transaction of assignment by the

Government of the right to use mineral resources.

(iv) For issuance of any other appropriate writ(s)/, order(s)/, direction(s) which deems fit and proper in the facts and circumstances of the case.â??

2. Having heard counsels for both the sides and looking to the facts and circumstances of the case, it appears that this Writ Petition has been

preferred which is premature in nature.

3. Neither any show cause notice nor any adjudication upon the payment of service tax amount has been done by the respondents. As and when show

cause notice is issued by the respondent upon this petitioner, a reply shall be given and such show cause notice shall be adjudicated upon by the

respondents in accordance with law and on the basis of evidence on record.

4. As on today, nothing is against the present petitioner. The respondents have all power, jurisdiction and authority to enquire into the matter from this

petitioner. This petitioner is not immuned from enquiry. As nothing has been finalized by the respondents, we are not inclined to decide the prayer of

this petitioner whether the petition should be allowed or rejected, because, it is premature in nature. It may happen that respondents may accept the

contentions of the petitioner and it may also happen that respondents may reject the contentions of the petitioner. Dispute will arise only when the

contentions of the petitioner are being rejected by the respondents.

5. This petitioner appears to be a chance taking petitioner. In advance it is avoiding the liability which is not permissible in the eye of law.

6. We are not here to pre-adjudicate or pre-judge the issue, before it is finalized by the respondents, hence, this Writ Petition is, hereby, dismissed.