
(2016) 09 JH CK 0061
In the Jharkhand High Court
Case No : W.P.(T) No. 2583 of 2014

Vijeta Projects and Infra. Ltd

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 05-09-2016

Acts Referred:

Jharkhand Value Added Tax Act, 2005 — Section 44, Section 55

Citation : (2017) 1 AIRJharR 839 : (2017) 2 JCR 679

Hon'ble Judges : D.N. Patel and Pramath Patnaik, JJ.

Bench : Division Bench

Advocate : M/s. Sumeet Gadodia, Rajesh Kumar, Advocates, for the Petitioner;
J.C. to A.A.G, for the State

Final Decision : Allowed

Judgement

D.N. Patel, J.—This writ petition has been preferred for getting directions upon the respondents to refund the excess amount of Tax Deducted at Source (TDS) by the respondents - State Government. This amount is for the financial years 2007 - 08 and 2008 - 09. For these financial years, the assessments have already been completed by the respondents - State Authorities. These assessment orders are at Annexure - 1, 1/1, 2 and 2/1 onwards of the memo of this petition. Looking to these annexures, it appears that there is a detailed assessment orders and it has been stated by the State Government that there is an excess amount of TDS for different years as under : -

Financial Year

Amount of refund claimed

Date of filing of application

2007 - 2008

Rs.40,91,826.86

16.03.2011

2008 - 2009

Rs.13,91,260.00

24.02.2012

Total Rs.

54,83,086.86

2. It is submitted by the counsel for the petitioner that this amount, which is excessively deducted as TDS, should have been refunded within the period of six months from the date of the application.

3. It is further submitted by the counsel for the petitioner that for the financial year 2008 - 09, there is a revision in the calculation of the amount to be refunded by the respondents and the said revision is as under : -

Financial year

Earlier excess payment notice

Revised excess payment notice

2008 - 09

Rs. 13,91,260.00

Rs, 6,22,374.00

Total

Rs. 13,91,260.00

Rs, 6,22,374.00

4. It is further submitted by the counsel for the petitioner that for the rest of the assessment year, there is no revision by the State Government. Thus, the amount to be refunded for the financial year 2007 - 08 remained as it is. The petitioner is accepting the revision in the refund carried out by the respondents for the financial year 2008 - 09.

5. It is further submitted by the counsel for the petitioner that this amount for the different financial years is the excess amount of TDS and, therefore, it should have been refunded within a period of six months from the date of the application for refund and if the said amount is not paid within six months as per Section 55 of the Jharkhand Value Added Tax Act, 2005, this petitioner is entitled to simple interest @ 6% per annum.

6. Counsel for the respondents - State submitted that a detailed counter affidavit has been filed by the respondents - State authorities. For the refund of TDS for different financial years, notice has been issued to the concerned officials for

verification of amount of TDS and, therefore, let a suitable direction be given to the respondents - State authorities to finalise the refund applications within the time bound schedule in accordance with law.

7. Having heard the counsels for both the sides and looking to the facts and circumstances of the case, it appears that the present petitioner was the works Contractor. He was performing the work of the Government and at the time of payment of the amount for the work carried out by this petitioner, the State has deducted TDS under Section 44 of the Jharkhand Value Added Tax Act, 2005.

8. For the different financial years, the assessments have been completed by the respondents as per Annexure - 1 and 2 series and excess amount of TDS has also been mentioned in these orders.

9. Looking to Annexure - 1 and 2, it appears that for the financial year 2007 - 08 the excess amount of TDS is Rs.40,91,826.86 (Annexure - 2). Similarly, for the financial year 2008 - 09 the excess amount of TDS is Rs. 13,91,260/- (Annexure - 2/1).

10. Thus, all these orders have been passed by the respondents - State authorities and this excess amount of TDS, which is said to have been deducted under Section 44, has to be refunded. For the refund, the applications have also been preferred and these applications are at Annexure - 3 series.

11. It further appears from the facts of the case that for the financial years 2008 - 09, the amount to be refunded has been revised vide order dated 29.09.2015 and this revised amount is Rs.6,22,374/- for the financial year 2008 - 09. For the rest of the financial year, there is no revision in the refund amount and the refund amount has been carried out by the respondents - State authorities. Thus, the amount to be refunded to the petitioner for the different financial years are as under : -

Sl No.

Financial Year

Amount to be refunded

From the date

1

2007 - 08

Rs.40,91,826.86

16.09.2011 (date of application for refund is 16.03.2011)

2

2008 - 09

Rs.6,22,374.00

29.03.2016 (date of application for refund is 29.09.2015)

12. Looking to the counter affidavit filed by the respondents - State especially paragraph - 15 and 16 thereof, the excess amount deducted by the State towards TDS under Section 44 of the Jharkhand Value Added Tax Act, 2005 was indicated to be refunded after verification and completion of assessment proceeding. The petitioner is claiming refund only for the financial years 2007 - 08 and 2008 - 09.

13. Thus, the amount of the refund has already been calculated by the respondents. Moreover, the revision in the amount to be refunded is also made by the respondents for the year 2008 - 09 vide order dated 29.09.2015 whereas, there is no revision for the amount to be refunded for rest of the financial year i.e. 2007 - 08. Therefore, for the financial year 2007 - 08 the amount which has been finalised by the respondents vide their orders at Annexure - 1 and 2 have attained finality and so far as the order of refund for the financial year 2008 - 09 is concerned, there is revision in the calculation of the excess amount of TDS which is revised vide order dated 29.09.2015. Therefore, these amounts are to be refunded to the petitioner by the State because the same is excess amount of TDS deducted by the State in the relevant financial years. There is a demand of the refund also by the petitioner vide his applications which are at Annexure - 3 series. Interest as per Section 55 of the Jharkhand Value Added Tax Act, 2005 @ 6% per annum will accrue from lapse of six months from the date of the application. Thus, the amount for the financial year 2008 - 09, which is at Rs.6,22,374/- is to be refunded with simple interest @ 6% per annum w.e.f. 29.03.2016 onwards because the revision in the amount to be refunded is made vide order dated 29.09.2015 and six months period will lapse on 25th March, 2016 and hence, interest will start from 29th March, 2016.

14. We therefore, direct the respondents to refund the amount with the aforesaid interest w.e.f. 29th March, 2016 for the financial year 2008 - 09.

15. We further direct the State of Jharkhand to refund the amount of Rs.40,91,826.86 for the financial year 2007 - 08 with simple interest @ 6% per annum w.e.f. 16.09.2011 because in this case the application for refund was preferred on 16.03.2011.

16. For no fault of this petitioner, this amount has not been refunded after the orders passed by the respondents - State authorities at Annexure - 1 and 2 series and after revising the calculation of the TDS vide order dated 29.09.2015 for the year 2008 - 09. This amount shall be refunded at the earliest and in no case later than 30 days from today.

17. Though, the counsel for the petitioner has argued the case at length that whatever the amount is revised for refund, is also a wrong calculation. In fact, this petitioner is relying upon every calculation made by the respondents - State

authorities for the aforesaid financial year and therefore, he has preferred application for refund of the TDS which is excessive deduction made by the respondents - State authorities.

18. It has been held by a Division Bench of this Court in M/s Abrest Engineering Company v. State of Jharkhand & Ors. reported in 2003(3) JCR 110 (Jhr) in paragraphs - 6 and 7 as under : -

"6. It appears to us that it is for the State and those in charge of the treasury to ensure that the deposits made under Rule 26 - A of the Bihar Sales Tax Rules, are made strictly in terms of that Rule and in the present context, in terms of sub - rule 3(1) thereof. This would go a long way in avoiding delay in refunding the amount due to an assessee and prevent the running of interest in terms of Section 43 of the Bihar Finance Act, thereby leading to a saving for the Government. Similarly, a dealer entitled to refund will also be entitled to get the refund within the period fixed by the statute and without waiting indefinitely for the refund of the amount which became due to him. We are therefore satisfied that the State of Jharkhand, the officers of the Treasury and the Commercial Taxes Department should be directed to strictly enforce Rule 26 - A of the Sales Tax Rules. We are also satisfied that the Commercial Taxes Department should be directed to invoke Section 25 - A(6) of the Bihar Finance Act and to take appropriate proceedings against those who had deducted the tax at source and who had not deposited the same into the treasury in compliance with Rules 26 - A of the Sales Tax Rules. We think that strict implementation of these provisions would go a long way in saving the Exchequer from incurring of liability for interest and would enable the department to make refunds within the time contemplated by Section 43 of the Bihar Finance Act.

7. Now coming back to the case in hand, the reason given for not refunding the amount on or before 2.12.1998, is not seen to be acceptable or justifiable. The argument of learned counsel for the petitioner that the delay was not bona fide cannot be brushed aside. On the scheme of Section 43 of the Bihar Finance Act, clearly, the petitioner is entitled to get interest on the amount refunded to him on 22.2.2003 at 9% per annum from 3.12.1998 till 22.2.2003. Since the amount refundable had already been refunded pending the writ petition, no direction in that behalf is necessary.

In the result, we allow this writ petition to the extent of directing the respondents to pay interest at 9% per annum on the amount refunded to the petitioner from 3.12.1998 till 22.2.2003 when the amount was actually refunded. We also direct the respondents to ensure that Rule 26 - A of the Bihar Sales Tax Rule are strictly implemented and issue appropriate directions to the concerned treasuries in that regard. We also direct the department to take action against those who are not complying with Rule 26 - A(3)(i) of the Bihar Sales Tax Rules while making deposits of the amounts deducted at source. In the circumstances, we make no order as to costs."

(Emphasis supplied)

19. In view of the aforesaid decision also, the amount has to be refunded by the State with interest looking to the aforesaid decision and Section 55 of the Jharkhand Value Added Tax Act, 2005.

20. We further direct the State to hold an enquiry as to why the amount has not been refunded to this petitioner even after the orders at Annexure - 1 and 2 series, because the public exchequer has to bear the burden of interest upon the amount to be refunded. In fact, once the assessment orders have already been passed and the figure is arrived at by the respondents - State authorities that there is excess TDS deducted by the State authorities, it should have been refunded within a period of six months from the date of application preferred by this petitioner and as stated herein above for one financial year, there is revision in the order, but, even after the revision also the amount has not been refunded and for the rest of the financial year, there is no revision in the calculation of excess TDS amount deducted by the State and assessment orders at Annexure - 1 and 2 of this writ petition have attained their finality much earlier and, therefore, this amount should also have been refunded within a period of six months from the date of application for the refund. Therefore, an enquiry may be conducted by the State authorities and necessary action may also be initiated against the erring officials of the State, so that similar type of errors may not be repeated by the officers of the respondents - State authorities. It is necessary to avoid multifariousness of petitions of similar nature.

21. This writ petition is allowed to the aforesaid extent.