

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (T) No. 3342 of 2022

M/s Tata Steel Limited through its Chief Legal Counsel
(Indirect Taxation) Vikash Mittal --- --- Petitioner

Versus

1. The State of Jharkhand through the Secretary, Commercial Taxes
Department, Government of Jharkhand
2. Deputy Commissioner of Commercial Taxes, Urban Circle, Jamshedpur
Division, Jamshedpur
3. Joint Commissioner of Commercial Taxes (Appeals), Jamshedpur Division,
Jamshedpur
4. Commercial Taxes Officer, Urban Circle, Jamshedpur Division, Jamshedpur
--- --- Respondents

CORAM: **Hon'ble Mr. Justice Aparesh Kumar Singh**
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner: M/s Sumeet Gadodia, Salona Mittal, Advocates
For the Resp.-State: Mr. P.A.S. Pati, G.A-II

04 / 19.10.2022 Interlocutory Application No. 9617/2022 has been preferred for ignoring defect and exemption from filing certified copy of Annexure-9 which is the photocopy of the appellate order. It is submitted that since the record of the Inferior Authorities are before the learned Commercial Taxes Tribunal, certified copy of the appellate order could not be obtained. As such, defect may be ignored since the order impugned is primarily that of the Commercial Taxes Tribunal.

2. In that view of the matter, surviving defect is ignored. I.A. stands disposed of.

3. The instant writ petition arises out of the impugned judgment dated 31.12.2021 passed by the learned Commercial Taxes Tribunal, Jharkhand in Revision Application No. JR 186/2015 pertaining to the Assessment Year 2002-03. Reassessment proceedings were initiated upon audit objection through notice dated 12.01.2009 (Annexure-2) under section 17(2) read with section 19(1) of Bihar Finance Act, 1981. Learned Tribunal upheld the appellate order dated 12.12.2014 passed by the Joint Commissioner of Commercial Taxes (Appeals), Jamshedpur Division, Jamshedpur (Respondent No. 3) and rejected the contention of the petitioner both on merits as also in respect of the plea of lack of proper notice in the statutory Form XIV as prescribed in terms of Rule 20 of Bihar Sales Tax Rules, 1983.

4. Learned counsel for the petitioner submits that Division wise breakup of Misc. Income, Sale of Misc. good and Stores for the period 2002-03 pertaining

to the Steel Division of Rs. 2,41,29,42,332.00 included the sales of Misc. goods and articles, stores, etc. Ex- Jamshedpur amounting to Rs. 51,60,04,747.00 and such audit report was accepted by the Assessing Officer. Learned Auditor while comparing with the figure of Rs. 2,41,29,42,332.00 with the figures of sale of Misc. goods and stores added to the GTO of the petitioner's Steel Division, Jamshedpur amounting to Rs. 187.43 crore, suggested that the petitioner's turnover to the extent of Rs. 187.43 crore has been short levied to tax. This was the basis of initiation of reassessment proceedings. However, despite the breakup contained in the annual audit report of the petitioner clearly showing the amount of Rs. 187.43 crore as relating to other Divisions of Tata Steel, same were erroneously added to the gross turnover of the Steel Division at Jamshedpur and levied to tax amounting to Rs. 6,64,65,700/- @ 4%. It is submitted that the Appellate Authority upheld the reassessment order without giving proper opportunity to the petitioner to adduce evidence. Learned Tribunal despite the details of the breakup shown to it as Annexed to the Memo of Revision, upheld the appellate order. Learned Tribunal has summarily rejected the plea of lack of proper notice in the statutory Form as a mere technical objection. Learned counsel for the petitioner relied upon the decision of the Apex Court in the case of **State of Jharkhand and others versus Bihar Sponge Iron Ltd. [2021 SCC OnLine SC 997]** arising out of the judgment of this Court in W.P (T) No. 5516/2017 reported in **[2019 SCC OnLine Jhar 1439]**. He submits that this Court had quashed the show-notice issued by the competent authority under Rule 58 for violation of Section 70(5) (b) on the ground that it was not in conformity with the provisions of Jharkhand Value Added Tax Act, 2005 and the Rules framed thereunder. The Apex Court affirmed the view taken by this Court that the show-cause notice was infirm and not in conformity with the Act and Rules and therefore, did not require any interference. However, the Apex Court was of the view that after setting aside the impugned orders on the grounds of lack of proper notice in statutory Form, liberty should have been conferred by the High Court to enable the Respondents to proceed in the matter by issuance of fresh show-cause notice and in accordance with law. It is submitted that the present reassessment proceedings suffer from same infirmity as would be obvious from Annexure-2 notice dated 12.01.2009 when compared to the statutory notice in Form XIV required to be served upon the assessee for initiation of reassessment proceedings in terms of Section 17(2) and 19(1) of Bihar Finance Act read with

3.

Rule 20 of Bihar Sales Tax Rules, 1983. He submits that the petitioner is apprehending coercive steps in view of issuance of demand notice dated 20.09.2022 bearing letter no. 3748, for stay of which I.A. No. 9618/2022 has been preferred. It is submitted that there are sufficient grounds for the petitioner to succeed in the matter and interim protection may be granted as the petitioner has made out a prima facie case.

5. Learned counsel for the State prays for and is allowed four weeks' time to file counter affidavit. Two weeks' time thereafter is allowed to the petitioner to file reply, if so advised.

6. In the meantime, subject to deposit of 20% of the tax of Rs. 6,64,65,700/- in the State Exchequer through challan within a period of 15 days from today, no coercive steps be taken against the petitioner. I.A. No. 9618/2022 stands disposed of.

(Aparesh Kumar Singh, J)

(Deepak Roshan, J)

Ranjeet/