

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T.) No. 6400 of 2014

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M/s TATA STEEL LIMITED (A company incorporated under the companies Act, 1956), having its registered office at Bomaby House, 24 Homi Mody Street, Mumbai 400001; and its Colliery at West Bokaro Division, Ghatotkach, Ramgarh, P.O. And P.S. Ramgarh, District Ramgarh, PIN 825314 (Jharkhand); through its Chief (Legal & Compliance) namely, Smt. Meena Lall, wife of Sri Behari Lall, resident of 2nd Floor, 'B' Block, 228, GK I, New Delhi 110048. **Petitioner**

Versus

1. The State of Jharkhand, through its Secretary-cum-Commissioner of Commercial Taxes, Jharkhand, having its office at Project Building, P.O. And P.S. Dhurwa, Ranchi 834004, District Ranchi (Jharkhand)
2. Joint Commissioner of Commercial Taxes (Administration), Hazaribagh Division, Hazaribagh, P.O. And P.S. Hazaribagh, District Hazaribagh.
3. Deputy Commissioner of Commercial Taxes, Ramgarh Circle, Ramgarh, P.O. And P.S. Ramgarh, District Ranchi.
4. Assistant Commissioner of Commercial Taxes, Ramgarh Circle, Ramgarh, P.O. And P.S. Ramgarh, District Ramgarh.

.... ... **Respondents**

CORAM : HON'BLE MR. JUSTICE D.N. PATEL
HON'BLE MR. JUSTICE PRAMATH PATNAIK

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For the Petitioner	: Mr. S.D. Sanjay, Sr. Adv. Mr. Sumeet Gadodia, Adv.
For the Respondents	: Mr. Ajit Kumar, A.A.G. Mr. S. Sundaram, Adv.

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04/ Dated 27th February, 2015

Per D.N. Patel, J :

1. This writ petition (Tax) has been preferred by the petitioner challenging the order passed by the respondent on 10th December, 2014, which is at Annexure-8. Attachment order has been passed by the respondent authorities for non payment of the amount of the **Value Added Tax** under Jharkhand Value Added Tax Act, 2005 for the months of May, June and July, 2005 for which this petitioner has already preferred a revision application before the Commissioner, Commercial Taxes, State of Jharkhand along with the stay application in the memo of revision application, which is at Annexure-6. It has been stated in paragraph 1 thereof that the Assessing Officer who has passed the order is in habit of passing ex-parte orders and always hurriedly attaching the bank accounts. This habit has also been narrated for the past period i.e. for the months of January,

February, March and April. The behaviour of the Assessing Officer is evident from the order passed by the Commissioner, Commercial Taxes, which is at Annexure-4 dated 16th September, 2014. Thus, even for a previous period i.e. January, February, March and April, 2014 as he has passed ex-parte order, of assessment, the order of very same officer was quashed and the matter was remanded. The said officer is consistent in commissioning his mistakes and, therefore, another ex-parte order has been passed for the months of May, June and July, 2014. This petitioner is also consistent in preferring revision application before the Commissioner, Commercial Taxes along with stay application. But, this time revision application as well as the stay application was pending before the Commissioner, Commercial Taxes; arguments canvassed by both the sides, are over and since long, the judgment has been kept reserved by the Commissioner, Commercial Taxes in a revision application in which scrutiny assessment order was passed by the Assessing Officer for the months of May, June and July, 2014. Thus, for this period the attachment order has been passed by the Commissioner, Commercial Taxes, Ramgarh Circle, Ramgarh on 10th December, 2014 which is at Annexure-8.

2. Counsel appearing for the petitioner submitted that the petitioner is not a fly-by-night company. In fact, the petitioner is a regular tax payer. Huge amount of tax is being paid by the petitioner regularly since several decades i.e. much before the bifurcation of the State.

3. Moreover, for a previous period i.e. January, February, March and April, 2014 the said Assessing Officer has passed ex-parte order and, therefore, Commissioner, Commercial Taxes had quashed the order and remanded the matter. The said Assessing Officer is in habit of passing ex-parte order and not properly appreciating the provisions of Jharkhand Value Added, Tax, 2005 especially section 18(4)(ii) and (iii) read with Section 33 of the Act, 2005 and, therefore, again direction was sought for from the Commissioner, Commercial Taxes, Jharkhand, Ranchi, and the order was passed by him which is at Annexure-7 dated 5th December, 2014. Thus, for previous period i.e. January, February, March and April, 2014 not only the scrutiny order passed by the Assessing Officer was quashed vide order dated 16th September,

2014 by Commissioner, Commercial Taxes, but, further guidance has also been given vide order dated 5th December, 2014 which are at Annexures- 4 & 7 respectively to the memo of this petition.

Counsel appearing for the petitioner has further submitted that previously also the very same Assessing Officer has committed similar type of mistakes and once again during the pendency of this revision. This fact is stated in the supplementary affidavit filed by the petitioner.

4. Assessment order was passed for the year 2011-2012. Now under Section 79 of the Jharkhand Value Added Tax Act, 2005 an appeal can be preferred within a period of 30 days from the date of receipt of a copy of the order and the petitioner had preferred an appeal also before expiry of the limitation period, but, the very same Assessing Officer has attached the bank accounts. Repeated mistakes is not an error of the officer, but, a deliberate attempt. Provisions of appeal and revision will be of no help to the assessee when this is the attitude of the Assessing Officer and, therefore, the present petition has been preferred for quashing and setting aside similar type of error committed by the Assessing Officer, who has passed the attachment order of the bank accounts vide order dated 10th December 2014 which is at Annexure-8 to the memo of the petition.

5. Counsel appearing for the respondents- State submitted that after passing the scrutiny order by the Assessing Officer for the months of May, June and July, 2014 as no stay has been obtained, no illegality has been committed by the said Officer by attaching the bank accounts vide order dated 10th December, 2014, which is at Annexure-8 and hence, this writ petition (Tax) may not be entertained by this Court.

6. Having heard both the sides and looking to the facts of the case we hereby quash and set aside the order dated 10th December, 2014 passed by the respondents authority, which is at annexure-8, mainly for the facts and reasons:

I. The petitioner is a limited company, who is paying huge tax regularly since last several decades and this petitioner is paying huge tax to the Central Government approximately Rs.11,000 crores and to the State Rs. 995 crores annually. This is not a fly-by-night company.

II. It further appears from the facts of the case that for the months of January, February and March of 2005 the very same officer passed scrutiny order, ex-parte, without appreciating the provisions of Jharkhand Value Added Tax, 2005. Therefore, revision application was preferred by this petitioner before the Commissioner, Commercial Taxes, who passed the order dated 16th September, 2014, which is at Annexure-4 to the memo of the petition, whereby the order passed by the Assessing Officer was quashed and set aside and the matter was remanded.

III. It further appears from the facts of the case that similar mistake has been committed by the very same Assessing Officer for the months of May, June and July, 2014 and again this petitioner has approached the Commissioner, Commercial Taxes by way of revision application. The memo of the revision application is at Annexure-6.

Looking to the paragraph no. 1 of Annexure-6, the main contention is raised about the ex-parte order passed by the Assessing Officer. Stay application is also pending before the Commissioner, Commercial Taxes.

It appears from the facts that the arguments are over and the judgment has been reserved by the Commissioner, Commercial Taxes.

IV. It appears that the Assessing Officer has hurriedly passed the order dated 10th December, 2014 which is at Annexure-8.

V. It further appears from the supplementary affidavit filed by the petitioner that for the assessment year 2011-12, the very same Assessing Officer had passed an order which is appealable within a period of 30 days. This petitioner has also preferred an appeal on 29th day viz. before the statutory date of preferring appeal is over. The attachment order was passed by the very same Assessing Officer.

VI. It ought to be kept in mind by the Assessing Officer that when assessee is regularly paying a huge amount of tax and consistently the orders passed by the very same Assessing Officer are being quashed, he should wait till the judgment, reserved by the Commissioner, Commercial Taxes, is pronounced. The amount of this petitioner was already with the nationalized bank. The money of the Government is secured with the nationalized bank. Petitioner company is not a sick company

from any angle.

Looking to the paragraph no. 12 to the memo of the petition, the petitioner is paying tax to the Central government which is approximately Rs. 11000 crores and to the State which is approximately Rs. 995 crores, annually. Attachment to the bank accounts should not be a routine phenomena. It shows weakness of the mind. Whenever any company is not in a position to pay the tax or is deliberately avoiding the payment of the taxes for a longer time or the order passed by the authority has not been complied with without any justifiable reason or whenever an assessee is not paying the tax after several demand notices and orders, then attachment order can be passed, but, looking to the facts of the present case it appears that this petitioner has availed the efficacious alternative remedy.

The scrutiny order passed by the Assessing Officer has been challenged in accordance with law. Previously also, similar order passed by the Assessing Officer has been quashed vide order dated 16th September, 2014 and further guidance has also been given to the said officer vide order dated 5th December, 2014 which is at Annexure-7 to the memo of the petition.

Similarly, for the year 2011-12 also this Assessing Officer has hurriedly attached the bank accounts before the statutory period, in preferring appeal, was over.

VII. Hon'ble Bombay High Court in the case of **The Director of Income Tax(Exemption), Mumbai Vs. The Income Tax Appellate Tribunal Mumbai Branch, & Anr. as reported in 2014-TIOL-154-HC-MUM-IT** at paragraph 6,7 & 8 has held as under :

“6 The Act provides a period of sixty days to an assessee to file an appeal from the order of CIT(A) to the Tribunal. This Court in the matter of UTI (supra) has laid down the following guidelines for effecting recovery of dues.

“1. No recovery of tax should be made pending (a) Expiry of the time for filing an appeal; (b) Disposal of a stay application, if any, moved by the assessee and for a reasonable period thereafter to enable the assessee to move a higher forum, if so

advised coercive steps may, however, be adopted where the authority has reason to believe that the assessee may defeat the demand, in which case brief reasons may be indicated.

2. *The application, if any, moved by the assessee should be disposed of after hearing the assessee and bearing in mind the guidelines in KEC International Ltd. (supra);*

3. *If the Assessing Officer has taken a view contrary to what has been held in the preceding previous years without there being a material change in facts or law, that is a relevant consideration in deciding the application for stay;*

4. *When a bank account has been attached, before withdrawing the amount, reasonable prior notice should be furnished to the assessee to enable the assessee to make a representation or seek recourse to a remedy in law;*

5. *In exercising the powers of stay, the Income Tax Officer should not act as a mere tax gatherer but as a quasi judicial authority vested with the public duty of protecting the interest of the Revenue while the same time balancing the need to mitigate hardship to the assessee. Though the assessing officer has made an assessment, he must objectively decide the application for stay considering that an appeal lies against his order; the matter must be considered from all its facets, balancing the interest of the assessee with the protection of the Revenue.*

The above order in UTI (supra) was brought to the notice of the Assessing Officer on 13 November 2013 by respondent No.2 while pointing out that it would be filing an appeal and stay application to the Tribunal in respect of the order of CIT(A).

7. *The action of the petitioner revenue, in particular, the Assessing Officer was in defiance of the above directions of this Court in UTI Mutual Funds vs. ITO*

(*supra*) wherein this Court had *inter alia* directed the revenue that no recovery of tax should be made before expiry of the time limit for filing an appeal before the higher forum has expired. The Court also had directed that when the bank account has been attached the revenue would not withdraw the amount unless it has furnished a reasonable prior notice to the assessee to enable the assessee to seek recourse to a remedy in law. The action of the petitioner revenue in not only attaching the bank account but withdrawing the money from the bank was before the expiry of the time limit for filing appeal was only with a view to foreclose the option of respondent No.2 of obtaining a stay from the Tribunal. The respondent No.2 had received the order of the Commissioner of Income Tax (Appeals) only on 16th November, 2013. Respondent No.2 had 60 days time to prefer appeal there from. However, the petitioner revenue attached the bank account of respondent No.2 on 18th November, 2013 itself i.e. within two days of communication of the order of the Commissioner of Income Tax (Appeals) by respondent No.2. Further, not only the bank account has been attached on 18th November, 2013 but the amounts were forcibly withdrawn on that date itself from the bank so as to completely foreclose the remedy available to respondent No.2 under the Act. Long years ago in *East India Commercial vs. Collector of Customs AIR 1962 (SC)1893= (2002-TIOL-138-SC-LMT-CB* the Supreme Court had observed that the law declared by the High Court is binding on all authorities functioning within the State over which the High Court has jurisdiction. The decision of this Court in *UTI Mutual Funds* (*supra*) was binding upon the petitioner revenue and the Assessing Officer.

8. Therefore, the above action on the part of the Assessing Officer was against the elementary principles of rule of law. The State is expected to act fairly. The undue haste on the part of the Assessing Officer in

recovering a sum of Rs.159.84 crores was not only contrary to the binding decisions of this Court but also shocking to the judicial conscience. The entire action appears to have been directed to make the Tribunal and respondent No.2 helpless so that no relief can be granted in favour of respondent No.2. Leaving aside the case laws in favour of respondent No.2, on first principle itself no appellate authority and much less the Tribunal can be a silent spectator to the arbitrary and illegal actions on the part of the Assessing Officer so as to frustrate the legal process provided under the Act."

(Emphasized supplied)

VIII. In view of the aforesaid observations also the respondents authority ought not to have attached the amount which is lying in the nationalized bank. The Assessing Officer should not have attached the bank accounts, specially when the judgment is reserved by the Commissioner, Commercial Taxes in the revision application. It is expected from these two officers that similar error will not be repeated henceforth. We also direct the Commissioner, Commercial Taxes to give proper guidance to his/her subordinate officers in vertical hierarchy that whenever high ranking authority is reserving the judgment, there is no need of attachment of bank accounts. Assessee ought to be given fair chance to avail efficacious alternative remedy, otherwise this Court has no option, but, to entertain this petition under article 226 of the Constitution of India. Henceforth, the Commissioner, Commercial Taxes, if need arises, can also give prohibitory orders, in advance, to the assessing officers, specially to those, who are repeating their errors.

IX. As the amount has already been recovered by the respondents- State from the concerned bank we are constrain to pass an order for refund of the order. In fact the petitioner as on today is entitled to get refund. However, instead of passing an order of refund, it will meet the ends of justice, if we give direction to the Commissioner, Commercial Taxes to deliver the judgment in the revision application preferred by this petitioner at the earliest preferably within a period of four weeks from the date of receipt of a copy of the order of this Court.

It is a duty of the “State”- within the meaning of the Article 12 of the Constitution of India, not to infructuous the efficacious alternative remedy. It is constitutional duty of every “State”- within the meaning of Article 12 of the Constitution of India that if any assessee is availing statutory remedy by way of appeal or revision, the low ranking officer should not make appeal or revision infructuous.

X. The order passed by the Assessing Officer dated 10th December, 2014 at Annexure-8 is under section 46 of the Jharkhand Value Added Tax Act, 2005. The said section for ready reference reads as under:

“46. Auction of Seized Goods and Release of Security.-

(1) Goods which are seized under sub-section (5) of Section 70 (or under Section 72) of the Act and which are not released owing to failure to furnish security or to pay the penalty imposed under clause (b) of sub-section (5) of Section 70 (or under Section 72) within the time allowed shall be sold in public auction after following the procedure as indicated below:-

(2)(a) The step for public auction shall be taken by the circle in-charge, who shall cause to be published on the notice board of his office, a list of the goods seized and intended for sale with a notice under his signature, specifying the place where, and the day and time at which, the seized goods are to be sold and display copies of such lists and notices at more than one public place near the place where the goods were seized. Normally a notice of not less than ten days shall be given before the auction is conducted; but this condition may be waived in case of goods of perishable nature.

(b) Intending bidders shall deposit as earnest money a sum equal to ten per centum of the estimated value of goods;

(c) At the appointed day and time, the goods shall be put up in one or more lots, as the officer conducting the auction sale may consider desirable, and shall be knocked down in favour of the highest bidder subject to confirmation of the sale by the circle in-charge

conducting auction or an officer subordinate to the said circle in-charge.

(d) The caution purchaser shall pay the sale value of the goods in cash immediately after the sale and he will not be permitted to carry away any part of the goods until the sale has been confirmed by the authority specified in clause (a) and full value has been paid by him. If the successful bidders fails to deposit the purchase money in full, the earnest money deposited by him shall stand forfeited to the State Government. The earnest money deposited by the unsuccessful bidders shall be refunded to them after the auction is over;

(e) If the order-imposing penalty is either stayed or reversed in appeal or revision, the goods seized shall be released forthwith. If the goods are sold before such an order and any sum received as sale proceeds on account of auction sale of such seized goods has been appropriated towards penalty imposed, the sum so appropriated shall be refunded to the owner of the goods in the manner specified in Rule 19;

(f) Any amount of sale proceeds in excess of the amount appropriated towards penalty shall be refunded to the owner of the goods in the manner specified in Rule 19: the release of security deposited under clause (c) of sub-section (5) of Section 70 and refund thereof shall also be in the manner specified in Rule 19. ”

This is a mode of recovery of the value added tax. This special mode of recovery should not be made general by the Assessing Officer. In the facts of the present case, there was no need of the Assessing Officer to take a recourse under section 46 of the Jharkhand Value Added Tax Act, 2005 for recovery of the money from the nationalized bank as per the order dated 10th December, 2014 at Annexure- 8 and it is expected from the very same Assessing Officer that such type of mistakes will not be repeated henceforth. As the amount has already been recovered we are restraining ourselves from passing an order of refund, but, we hereby direct the Commissioner, Commercial Taxes to decide

the appeal preferred by this petitioner within a period of four weeks from the date of receipt of the copy of the order passed by this Court.

7. It is high time for the State either to change the Assessing Officer or Commissioner, Commercial Taxes because none of them can make assessee's appeal or revision infructuous and can encash the amount lying in the nationalized bank in the manner in which this Assessing Officer has realized the money.
8. In view of the aforesaid facts, reasons and judicial pronouncements and after giving sufficient guidelines to the Assessing Officer not to make infructuous the appeal or revision application filed by the assessee, this writ petition (Tax) is hereby disposed of with the aforesaid observations.

(D.N.Patel, J.)

(Pramath Patnaik, J.)

MM/RKM