IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.771 of 2016

Asian Natural Resources (India)
Limited (Formerly known as
'Bhatia International Ltd.'),
A Company incorporated under
the Indian Companies Act, 1956
having its Registered Office at
102, Sundaram Complex, 3,
Gurmeet Nagar, Indore (Madhya
Pradsh), Pin 452 001 through
its Authorised Signataory
Shri Ravindra Khare Son of
Mr. Ramgahan Khare, Aged 39
years, Occupation Service,
Residing at 'Shri Durga Kripa
Society', 1st Floor, Near Gram
Sangh, Honakatte Kulai,
Mangalore 575 019. .. Petitioner

Vs.

1. The State of Goa
through its Chief Secretary,
having his office at Secretariat,
Porvorim, Goa.

2. Assistant Commissioner of
Commercial Taxes,
Department of Commercial Taxes,
Vasco da Gama Ward,
Vasco da Gama, Goa.

3. Commercial Tax Officer
Department of Commercial Taxes,
Govt. of Goa. Vasco da Gama Ward,
Vasco da Gama, Goa .. Respondents

Mr. S. N. Joshi, Advocate for the petitioner.

Ms. Amira Razaq, Government Advocate for the respondents.

CORAM :- **C. V. BHADANG, J.**

DATE:- 20th February, 2017

ORAL ORDER :

By this petition, the petitioner is challenging the Assessment Order dated 31/03/2013, which has been confirmed in appeal by the learned Assistant Commissioner of Commercial Taxes and by the Administrative Tribunal.

2. The petitioner is a Company engaged in the business of import and sale of coal. In the year 2012, the name of the petitioner Company was changed from M/s. Bhatia International Ltd., as Asian Natural Resources (India) Ltd.

3. According to the petitioner, office of the petitioner was shifted from Vishwambhar Building, Vasco-da-Gama, Goa to new premises at c/o Damodar Gosavi, 302, 3rd floor, Rohan Arcade, opposite of M.P.T. Institute, Vasco-da-Gama, Goa.

4. On 31/03/2013, the Commercial Tax Officer, Vasco-da-Gama, Goa passed an Assessment Order, which according to the petitioner, was without service of any prior notice. The petitioner received a notice dated 01/11/2013 for non-payment of dues, which notice was received on 26/03/2014, when the petitioner for the first time, came to know of passing of the "ex-parte Assessment Order". On 11/07/2014, the petitioner collected certified copy of the Assessment Order and challenged the same

before the Assistant Commissioner on 08/07/2014.

5. The Assistant Commissioner of Commercial Taxes dismissed the appeal on 05/06/2015 on the ground of being barred by limitation. The Second Appeal filed by the petitioner was rejected by the Administrative Tribunal for want of pre-deposit.

6. The petitioner claims that in the meantime, by an order dated 29/04/2015, passed in Chamber Summons (L) No.415/2015, this Court had restrained the petitioner from operating 57 Bank accounts except one account in the Indusind Bank, which was for the purpose of payment of salaries of the employees. This is the reason given for non-deposit of the amount, which is a precondition for entertainment of the appeal. The petitioner, thus, being aggrieved by the judgment and order dated 28/04/2016, passed by the Administrative Tribunal, has approached this Court.

7. I have heard Shri Joshi, the learned Counsel for the petitioner and Ms. Razaq, the learned Government Advocate for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned orders passed.

8. It is contended by Shri Joshi, the learned Counsel for the petitioner that limitation for filing appeal will have to be reckoned

from the date of the knowledge of the order, which means, the knowledge about the contents of the order. It is submitted that such a knowledge can only be attributed when the copy of the order was received and not before. The learned Counsel submitted that there was no prior notice issued. The learned Counsel has pointed out certain challans under which the payment of tax was made, which according to the petitioner, has not been taken into consideration.

9. On the contrary, the learned Government Advocate has referred to the notices, which have been served on Mr. Gosavi. It is submitted that the petitioner has failed to remain present and has also not produced C forms. It is submitted that the appeal has rightly been dismissed on account of limitation and the Second Appeal, on account of the non-compliance with the condition of pre-deposit.

10. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

11. The First Appellate Authority has found that there was 454 days delay in filing the appeal. The record shows that a notice dated 14/03/2013 (at page 110) has been served on the representative of the petitioner on the same day. It is also shown

that the Assessment order for the year 2009-2010 and demand notice are served on 31/03/2013. Thus, the contention, in this regard, cannot be accepted. Even assuming that the knowledge of the order would mean the knowledge of the essential contents of the order, nothing prevented the petitioner from obtaining the certified copy immediately after the service of the demand notice. The Assistant Commissioner dismissed the appeal as being barred by limitation under Section 35(1) of the Goa Value Added Tax Act, 2005. It appears that there was delay at the instance of the petitioner in approaching the Administrative Tribunal also and hence, the application for condonation of delay was filed along with an application for waiver of pre-deposit. By an order dated 27/01/2016, the delay was condoned by consent of the parties and the petitioner was directed to comply with Section 36(2) of the Act within 10 days, which the petitioner has failed to comply. The Administrative Tribunal has also noticed that the petitioner has not produced C forms to show that the liability is nil. In that view of the matter, no case for interference is made out and the petition is dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA