IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16290 of 2014

Konkan Railway Corporation Ltd. through its General Manager (Accounts) having Corporate Office at Belapur Bhawan, Section-11, CBD Belapur, Navipur, Mumbai-400614.

... ... Petitioner/s

Versus

1. State of Bihar through Secretary cum Commissioner Commercial Taxes Department, Government of Bihar, Patna.
2. Secretary cum Commissioner Commercial Taxes Department, Government of Bihar, Patna.
3. Deputy Commissioner Commercial Taxes, Kishanganj Circle, Kishanganj.
4. Assistant Commissioner Commercial Taxes, Kishanganj Circle, Kishanganj.
5. Commercial Taxes Officer, Kishanganj Circle, Kishanganj.
6. State Bank of Mysore, Belapur Branch through its Branch Manager situated at Belapur Bhawan, Sector-11, Office No. 03, CBD Belapur, Navi Mumbai-400614.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Atul Chitale, Sr. Advocate Mr. Siddhartha Prasad, Advocate Mr. Sunit Kumar, Advocate Ms. Shrish Raman, Advocate Mr. Swekant Sinha, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC 11 Mr. Ram Krishna, Advocate
For the SBI	:	Mr. Rakesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 24-01-2024

In the instant petition petitioner has prayed for the following reliefs:-

> *"a) For issuance of appropriate writ(s)/ order(s)/ direction(s) for commanding the respondent Commercial Taxes Department to produce the exparte order dated **25.06.2010** passed by the Commercial Taxes Officer, Kishanganj Circle, Kishanganj in purported exercise of powers*

under the provisions of Bihar Finance Act, 1981 and Bihar Value Added Tax, 2005 whereby and whereunder illegal tax liability including penalty to the tune of Rs. 19,71,68,458.60/- (Nineteen Crores Seventy One Lacs Sixty Eight Thousand Four Hundred and Fifty Eight Rupees and Sixty Paisa) has been imposed on the petitioner for the period 2004-2005 to 2008-2009 and upon its production the Hon'ble Court may issue writ in the nature of Certiorari for quashing the same.

b) For issuance of appropriate writ(s)/ order(s)/ direction(s) for quashing the reminder demand notice dated ***08.08.2014*** *issued by the office of Deputy Commissioner Commercial Taxes, Kishanganj Circle, Kishanganj for payment of illegal tax liability including penalty to the tune of Rs. 19,71,68,458.60/- (Nineteen Crores Seventy One Lacs Sixty Eight Thousand Four Hundred and Fifty Eight Rupees and Sixty Paisa).*

c) For issuance of appropriate writ(s)/ order(s)/ direction(s) for quashing the Notice of Demand under Section 47 of the Bihar Value Added Tax Act, 2005 dated ***26.08.2014*** *issued by the office of Deputy Commissioner Commercial Taxes, Kishanganj Circle, Kishanganj to the Bank of the petitioner i.e. petitioner no. 6 for realization of illegal tax liability including penalty to the tune of Rs. 19,71,68,458.60/- (Nineteen Crores Seventy one Lacs Sixty Eight Thousand Four Hundred and Fifty Eight Rupees and Sixty Paisa).*

d) To restrain the respondent from realizing the illegal tax liability including penalty to the tune of Rs. 19,71,68,458.60/- (Nineteen Crores Seventy One Lacs Sixty Eight Thousand Four Hundred and Fifty Eight Rupees and Sixty Paisa) which has been imposed by Commercial Taxes Department, Government of Bihar arbitrarily actuated with malafide as the said authority embarked upon the wrong notion of law and facts.

e) And/or any other relief/reliefs for which the petitioner is entitled to in the facts and circumstances of the instant case."

2. The petitioner has entered into memorandum of understanding with Chief Engineer (Construction) Jharkhand, East Central Railway, Mahendrughat, Patna in so far as execution of work contracts during the period from 2004-2005, 2005-2006 and 2006-2007. Arising out of work contract tax liability on petitioner was with reference to State of Jharkhand or State of Bihar is the issue involved in the present lis. From perusal of the records Annexure-5/C series furnished by the petitioner along with supplementary affidavit dated 07.01.2022 reveals that certain tax payments have been made in the Tax Department of State of Jharkhand.

3. The Office of the Accountant General, State of Bihar raised certain Audit objections to the extent that petitioner was liable to pay escaped turn over tax for the period from 2004 to 2007 and further for non-filing of return for the period from 2005 to 2009. Such Audit objection was taken note of by the Tax Department of the State of Bihar and proceeded to issue notice to the petitioner on 02.06.2010 i.e., by the Commercial Tax Officer, Kishanganj Circle, Kishanganj, State of Bihar. Such a notice was issued at three places of the petitioner namely, Katihar, Kishanganj

and Navi Mumbai. For want of correct address, Katihar and Kishanganj were not served. On the other hand, notice addressed to Navi Mumbai was served belatedly to the petitioner on 06.07.2010, whereas the date of appearance pursuant to the notice dated 02.06.2010 was 15.06.2010 (within two weeks). Since notice dated 02.06.2010 was made known to the petitioner on 06.07.2010 and in the meanwhile, the Tax Department have proceeded to pass orders in respect of calculating escaped turn over tax and non-filing of return for the period from 2004 to 2007 and 2005 to 2009 respectively. Thereafter, an amount of Rs. 19,71,68,458.60/- (Nineteen Crores Seventy One Lakh Sixty Eight Thousand Four Hundred and Fifty Eight rupees and Sixty Paisa) was ordered to be determined and directed the petitioner to make payment. Feeling aggrieved by the order dated 25.06.2010 in so far as calculation and determination of amount of Rs. 19,71,68,458.60/-, petitioner has presented this petition and obtained interim order and even to this day, interim order is operative. Initially, they had approached the Bombay High Court and obtained an interim order. Bombay High Court noticed that Bombay High Court has no territorial jurisdiction. In the result, they have invoke remedy before this Court. They have the benefit of interim order before the Bombay High Court and it is being continued in the present lis.

4. From perusal of the order dated 25.06.2010 series, it is evident that it is an *ex parte* order. In all fairness, respondents should have waited for returned of notice issued to Navi Mumbai address or in the alternative they should have made a communication through e-mail or issuing one more notice for the reasons that huge amount of Rs. 19,71,68,458.60/- is alleged to have been involved in the matter. Therefore, issuance of notice for a period of 15 days was not reasonable and sufficient. Further, it is required to be noted that the alleged allegation are relates to the year 2004-2005 and up to 2008-2009. Therefore one more notice was warranted, since there was no hurry. The petitioner was required to collect necessary material information so as to appraise or make necessary reply to the show cause notice dated 02.06.2010. Therefore, we have come to the conclusion that sufficient notice- time period has not been provided to the petitioner.

5. Learned counsel for the petitioner submitted that State of Bihar Tax Department has no territorial jurisdiction in respect of work contract executed under the territorial jurisdiction of State of Jharkhand. In fact, he has pointed out certain documents along with the 2nd supplementary affidavit to the extent that certain tax payments have been made in the Tax Department, State of

Jharkhand. These are all the relevant documents for the purpose of determining the escaped turn over tax and non-filing of return for the aforementioned period. Further, if the petitioner fails to furnish material with reference to notice dated 02.06.2010, in that event, the State Tax Department of Bihar should have issued a notice to the Chief Administrative Officer (Construction), East Central Railway, Mahendrughat, Patna who had transacted with the petitioner with reference to work service contract under the territorial jurisdiction of State of Jharkhand. On the other hand, State Tax Department, Bihar proceeded to determine and calculate whatever the Accountant General Audit objection. Even perusal of Accountant General Audit objection, it is not crystal clear as to whether State of Bihar is liable to collect escaped turn over tax and non-filing of return tax in respect of transaction of work contract in the State of Jharkhand territorial Jurisdiction. Merely Office of the East Central Railway is situated in Mahendrughat, Patna that does not amount to the petitioner, was liable to pay tax in the State of Bihar or not. Without examining who is the competent authority to collect escaped turn over tax and non-filing of return etc. The Official respondents are also hereby directed to examine whether petitioner who is being registered dealer at Kishanganj Circle with reference to dated 08.07.2004, has he filed returned for the respective period or not. If he has not filed return, what are the action taken at the relevant point of time so as to ask him to file return on yearly basis. These issues have not been taken note of by the Commercial Tax Officer, Kishanganj Circle, Kishanganj.

6. On these counts, the petitioner have made out a case so as to interfere with the impugned order dated 25.06.2010 series and they are set aside. It is noticed that petitioner had the benefit of interim relief in respect of demand of Rs. 19,71,68,458.60/- is concerned, therefore, the benefit of interim order would continue in favour of the petitioner till the matter is decided afresh by the competent authority in respect of whether petitioner is liable to pay escaped turn over tax for the period from 2004 to 2007 and non-filing of return for the period from 2005 to 2009 or not? In this regard, a detailed show cause notice shall be issued to the petitioner and on receipt of such show cause notice the petitioner is hereby directed to furnish reply statement along with relevant documents. Thereafter, a date of oral hearing shall be fixed. If any assistance of Chief Administrative Officer (Construction) East Central Railway, Mahendrughat, Patna is warranted, in that event, notice shall be issued to Chief Administrative Officer for appearance of oral hearing along with the relevant documents. The petitioner is representative shall present and make submission

and further if any documents other than reply to the show cause notice to be issued by the respondents to be submitted by the petitioner. The competent authority is hereby directed to take note of each and every contention and document to be placed by the petitioner against the show cause notice and at the time of oral hearing. Further if any document is placed or oral submission made on behalf of the Chief Administrative Officer (Construction), East Central Railway, Mahendrughat, Patna may also be taken note of and proceed to pass a detailed speaking order even on the issue of competent authority read with territorial jurisdiction and communicate the same to the petitioner. The above exercise shall be completed within a period of four months from today, till the final order is passed, the respondents State of Bihar Department are hereby directed not to precipitate the subject matter.

7. Accordingly, writ petition stands allowed in part.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	
CAV DATE	
Uploading Date	31.01.2024
Transmission Date	