

(2009) 07 JH CK 0016
Jharkhand High Court
Case No: None

Agricultural Produce Market
Committee

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: July 22, 2009

Hon'ble Judges: Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This writ petition has been filed by the petitioner, Agricultural Produce Market Committee, for issuance of an appropriate writ or writs to the respondents to dispose of the petitioner's appeal pending before C.I.T. Appeal, Ranchi, which has been preferred by the petitioner assailing the order of the Assessing Officer, who has attached an amount of Rs. 89,43,917/- by way of the amount of tax, which, according to the Assessing Officer, is payable by the petitioner to the Department of Income Tax on account of the fact that the amount of tax which had accrued on the amount collected by way of market fees by the petitioner for the assessment year 2002-03.

2. To explain the controversy, it may be relevant to state that the petitioner, Market Committee, collected market fees in the assessment year 2002-03 amounting to a few crores of rupees (the accurate figure is not furnished by the counsel for the parties). It is an admitted position that a sum of Rs. 3 crores collected as market fees by the petitioner was not spent within a period of one year, as a result of which the petitioner was liable to pay income tax on the amount collected by it. However, the petitioner came up with the case that it is not liable to pay any tax on the unspent amount of Rs. 3 crores as it is legally entitled to spend this amount within a further period of five years, the implication of which, according to the petitioner, is that the amount of market fees which remained unspent in the entire assessment year 2002-03 could be spent within a further period of five years and if the petitioner is

unable to spend the amount within this period, only then it would be liable to pay tax on this amount.

3. The respondent Income Tax authority did not claim any tax from the petitioner on the unspent amount after 2003 and thereafter it even did not claim the amount of tax payable by the petitioner within a further period of five years, which admittedly expired on 31.3.2008. The respondent authority, after expiry of the period during which the petitioner could not spend the amount of market fees on the development of the market, assessed an amount of Rs. 89,43,917/- as the tax amount on the unspent amount of Rs. 3 crores, which had been collected and which had accrued as unspent amount, not merely within one assessment year of 2002-03, but within a further period of five years, which admittedly expired on 31.3.2008.

4. The petitioner, being aggrieved with the order passed by the respondent-authority imposing an amount of Rs. 89,43,917/- as amount towards payable tax, filed an appeal before the C.I.T. Appeals, Ranchi, which is still pending. In the meantime, the respondent-authority issued an order for attachment of Rs. 89,43,917/-, which was lying in the account of the petitioner, Market Committee, and the entire bank accounts of the petitioner were also attached, due to which the petitioner filed the instant writ petition before this Court for releasing the bank accounts from attachment.

5. An interim order was passed on 30.3.2009 in favour of the petitioner, permitting it to operate all its Bank Accounts except the Fixed Deposit Account in the Ranchi Khunti Central Co-Operative Bank and the Saving Bank Account, amounting to Rs. 89,43,917/-, as a result of which the petitioner was not allowed to withdraw the amount which had accrued by way of an amount of tax claimed by the respondent-authority.

6. The matter has now come up, wherein the counsel for the petitioner initially endeavoured hard to impress upon this Court that the amount which has been kept under attachment should be released by permitting the petitioner to furnish Bank Guarantee for this amount, till the appeal is decided by the C.I.T. Appeals, Ranchi.

7. Having heard the counsel for the parties at some length, we are not prepared to accede to the request of the petitioner to the aforesaid extent, as the petitioner, Market Committee, admittedly has not spent the amount collected towards market fees even within a period of one year and further grace period of five years but the petitioner claims that it will establish this fact before the appellate authority and we express no opinion on this. But prima facie the respondent Tax Authorities have a strong prima facie case in their favour justifying attachment of Rs. 89,43,917/-, which they have claimed by way of tax from the Market Committee, as the petitioner had failed to establish before the Assessing Officer that it could claim exemption from payment of this amount. Since the Market Committee failed to prove that they had spent the entire amount of Rs. 3 crores which they had collected by way of

market fees, the action of the respondent authorities cannot be held to be prima facie illegal or unjustified in any manner so as to permit the petitioner to withdraw the amount lying in the fixed deposit, which the respondents have attached, merely by furnishing bank guarantee. It is, undoubtedly, true that the bank guarantee in proper and just cases may be accepted by the Court as a security for the amount which is sought to be withdrawn by the party concerned, but for this purpose the party seeking withdrawal of the amount on the basis of the bank guarantee must come out with a strong prima facie case in their favour so as to persuade the Court to accept the bank guarantee in order to release the amount by way of cash by the party concerned and an order for release of the amount by furnishing the bank guarantee cannot be treated as a usual norm or empty legal formality.

8. The petitioner, in the instant matter, has prima facie not been able to establish that it has spent the entire amount which had been collected by way of market fees, yet is insisting on retaining the amount of tax which has been levied by the Assessing Officer. We, therefore, deem it appropriate to reject the contention of the petitioner to the extent that it should be allowed to withdraw the amount merely by furnishing the bank guarantee.

9. Learned Counsel for the petitioner, having been unsuccessful in the aforesaid efforts, sought a direction from this Court that the appeal pending before the C.I.T. Appeals, Ranchi, be decided expeditiously.

10. It goes without saying that the respondent authorities are expected to decide the matter expeditiously. Nevertheless, we find no fault with the action of the respondent authorities in attaching the amount which is payable by the petitioner, Market Committee, by way of tax, which had accrued in the assessment year 2002-03, as prima facie the petitioner has not been able to establish that the said amount of Rs. 89,43,917/- has wrongly been attached by the authorities and therefore, we do not accede to the request of the petitioner that the said amount be released from the attachment even by way of furnishing bank guarantee. But the observation that the amount be released if the appeal is allowed also would be a futile exercise as it is plain common sense that if the appeal of the petitioner is allowed by the authorities, the amount attached by them will have to be released, provided the petitioner succeeds in demolishing the fact that the amount collected by it by way of market fees in the assessment year 2002-03, have not been spent even after the aforesaid five years. The writ petition, therefore, is dismissed.

11. However, It is recorded in the interest of justice that any observation affecting the factual matrix will not be treated as final since the same is subject to consideration before the C.I.T. Appeals.