# IN THE HIGH COURT OF JHARKHAND AT RANCHI

W. P. (T) No. 2429 of 2018

M/s. WS Retail Services Private Limited …. Petitioner

Versus

1. The State of Jharkhand, through the Secretary, Finance Department, Ranchi
2. The Commissioner of Commercial Taxes, Ranchi
3. Joint Commissioner of Commercial Taxes (Admin), Ranchi….. Respondents

CORAM: **Hon'ble Mr. Justice Aparesh Kumar Singh**
**Hon'ble Mrs. Justice Anubha Rawat Choudhary**

Through Video Conferencing

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For the Petitioner : Mr. Tarun Gulati, Sr. Advocate
M/s. Nitin Kumar Pasari, Kunal Kishore,
Vishakha Gupta, Manish Rastogi & Sidhi Jalan, Advocates.

For the Respondents: Mr. Piyush Chitresh, A.C to A.G

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**08/09.02.2021** Heard learned counsel for the parties.

2. The claim of refund of Rs. 61,74,899/- deposited between the period December, 2014 to August, 2015 by the petitioner before the Respondent-Commercial Taxes Department, was declined by order dated 1st September, 2016 (Annexure-4) passed by respondent no. 3 impugned herein on the ground that the application for refund was not maintainable. Learned Commercial Taxes Tribunal upheld the order of rejection by the impugned order dated 31st October, 2017 (Annexure-8) holding that in absence of any statutory provision under JVAT Act the learned JCCT had no jurisdiction to allow the refund application of the petitioner. Learned Tribunal at Para-6 observed that the receipt of the amount of Rs. 61,74,882/- by the Revenue Department from the petitioner between December, 2014 to August, 2015 is not in dispute.

3. Petitioner being aggrieved has approached this Court seeking quashing of the orders at Annexures- 4 & 8 and also for a declaration that he is entitled to seek refund despite being unregistered under the provisions of JVAT Act.

4. Learned senior counsel for the petitioner, Mr. Gulati submits that petitioner is engaged in the business of selling goods through the portal, www.flipkart.com, to end customers, for their personal use. Petitioner is not registered under the Jharkhand Value Added Tax Act, 2005 (hereinafter referred to as the 'JVAT Act'). Petitioner has not been assessed to tax under the JVAT Act. No demand notice was raised against the petitioner. Petitioner has paid Central Sales Tax to the tune of Rs. 58,05,157/- in the State of Origin on goods being transported by it to Dhanbad Circle to be delivered to Customers. This amount of Rs. 61,74,899./- was collected on the very same goods. That there was a single

transaction of sale on which CST had been paid in the State, where the movement of the goods commenced. During the relevant period, apart from the business of sale of goods using the online portal, the petitioner was also providing logistics services to the various sellers, who undertook sale through the said online portal. Since the amount was deposited without any tax liability or assessment and that no sale transaction took place within the State of Jharkhand, petitioner filed an application for refund under Section 52 of the Act. Petitioner had, in fact, deposited those amounts for continuity in business and to avoid coercive action. Learned senior counsel for the petitioner submits that refund has been refused on the ground that petitioner is not a registered or unregistered dealer under JVAT Act and there is no provision under the Act to make such a refund. Learned counsel for the petitioner further submits that retention of the amount without any liability of tax would be in violation of Article 265 of the Constitution of India. If such an amount is retained without the authority of law, petitioner is entitled to invoke the remedy of writ jurisdiction for its refund even if the JVAT Act may not have any such provision. Reliance has been placed upon the decision of the Apex Court in the case **HMM Ltd. Vs. Administrator, Bangalore City** reported in **(1989) 4 SCC 640, paras-12 & 13; (ii) Union of India Vs. A.V. Narasimhalu,** reported in **1983(13) ELT 1534 (SC), paras- 7 & 8 (iii) Hind Agro Industries Ltd. Vs. Commissioner of Customs** reported in **2008 (221) ELT 336 (Del.), paras-13 & 16.** He has also placed reliance upon a decision of this Court in the case of **Fame India Ltd. Vs. The State of Jharkhand,** reported in **MANU/JH/1302/2010 in W.P. (T) No. 4440 of 2009, para-4**. It is submitted that in such circumstances, a mandamus can be issued for grant of refund of the amounts collected and retained by the respondent in violation of Article 265 of the Constitution of India. It is submitted that the entire deposit was ad-hoc in nature. He has referred to the certificate granted by the Chartered Accountant at page-62 to the effect that no sales originated from the State of Jharkhand between April, 2014 to August, 2015. It is stated at para-30 of the writ petition that such amounts were not collected from the ultimate customers. Therefore, question of unjust enrichment does not arise. Learned counsel for the petitioner has further placed reliance upon the case of **Suresh Chandra Bose Vs. State of W.B,** reported in **AIR 1976 Cal 110, paragraph-6** in support of the proposition that under Section 52 of the Act, the refund can be filed by any person who is covered within the definition of “Dealer” and the person necessarily does not have to be registered under the Act for seeking refund which has been collected in excess of the amounts due under the Act. If the petitioner was not liable to pay any tax, then the

entire amount deposited by him would be “in excess” of the amount due, to which petitioner was not liable, but yet had deposited on a mistaken basis. He submits that Calcutta High Court in such circumstances has held that the entirety of the amount paid would be in excess of the amount due from him under the Act. If the construction urged on behalf of the respondent is accepted, it would lead to illogical consequences because in an event if a person had paid tax say of Rs. 10/- in excess he would be entitled to refund but if a man, who was not liable to pay any tax at all, has paid Rs. 1,000/- as tax he would not be entitled to any refund. Such a construction should not be advanced as it would be hit by Article 265 of the Constitution of India. Learned counsel for the petitioner submits that under the provisions of JVAT Act in particular Section 39, no assessment under Sections 37 or 38 can be made after expiry of 5 years from the end of the tax period, to which the assessment relates. In the facts of the present case, the deposits having been made during the period December, 2014 to August, 2015, any assessment of tax for the period closing 31st March, 2015 would be impermissible even if the assessment for the period upto August, 2015 may be permissible but only upto be 31st March, 2021. However, in case this Court is inclined to direct the respondent authorities to examine the claim of refund of the petitioner in accordance with law, a time line may be prescribed, so that the matter can attain quietus within a stipulated period.

5. Based on these submissions, learned counsel for the petitioner has prayed for quashing of the impugned order and a direction for refund of the amount.

6. Learned counsel for the Respondent-State has, at the outset, referred to the stand taken in the counter affidavit filed by the respondent no. 3 on 27th July, 2018 in defence of the orders of rejection dated 1st September, 2016 and 31st October, 2017 by learned Commercial Taxes Tribunal. In substance, the counter affidavit states that the petitioner was not registered under JVAT Act, 2005 and there were no records with regard to assessment of tax with the concerned Urban Circle, Dhanbad, therefore, no excess demand notices were raised against him. As such, there were no provisions under the JVAT Act, 2005 for refund of tax to the petitioner. Learned counsel for the State, Mr. Piyush Chitresh, however, submits, on instructions, that in case this Court is inclined to interfere in the orders of rejection, the matter may be remitted to the concerned respondent no. 3, Joint Commissioner of Commercial Taxes (Admin), Ranchi, Jharkhand ( Respondent no. 3) for examining the claim of the petitioner, in accordance with law.

7. We have considered the submission of learned counsel for the parties and taken note of the material pleadings on records as relied upon by them. We have also gone through the decisions cited by learned counsel for the petitioner.

It is the case of the petitioner, undisputed by the respondent that petitioner is not a registered dealer under JVAT Act, 2005 nor has been assessed to tax under the Act. No demand notices were raised against the petitioner as such to the effect that any tax is due against him. Petitioner claims to have made deposit of Rs. 61,74, 899/- in order to ensure continuity of business and to avoid coercive action without any demand of tax since the goods transported by the petitioner were already excisable to Central Sales Tax to the tune of Rs. 58,05,157/- which were paid in the State of Origin. No sale took place in the State of Jharkhand within that period. The principles regarding maintainability of writ petition seeking refund in case the levy is unauthorized or without jurisdiction or is unconstitutional is well settled by the decisions of the Apex Court. In the case of **HMM Ltd. (supra),** the Apex Court has held that realization of tax or money without the authority of law is bad under Article 265 of the Constitution of India. It has further been held in the case of **Arvind Lifestyle Brands Ltd. Vs. Under Secretary Technology Development Board & Ors.,** reported in **2019(368) ELT 387 (Kar.)** relying upon the decision in the case of **HMM Limited (Supra)** that any amount paid by mistake or through ignorance of repeal Act deserves to be refunded as retention of such amount would be hit by Article 265 of the Constitution of India. In the case of the petitioner admittedly there has been no assessment of tax liability till date. The claim of refund has been denied on the plea that there is no provision under the JVAT Act since the petitioner is not a registered dealer and no assessment proceedings have been held. Under the Scheme of JVAT Act, assessment proceedings can be held against dealers, who have failed to get themselves registered. However, no assessment can be made under Sections 37 or 38 after expiry of 5 years from the end of the tax period, to which the assessment relates. On the face of the pleadings on record and the stand of the respondents brought through their counter affidavit, the rejection of claim for refund only on the ground that there is no provisions under the JVAT Act, 2005 for entertaining such a claim is not sustainable in law. Whether the contention of the petitioner that the entire sale transaction originated in a different State after payment of central sales tax to the tune of Rs. 58,05,157/- and there was no sale transaction originating within the State of Jharkhand for the respondent to retain the amount so deposited is a matter of verification upon assessment.

However, as it appears the transaction relates to the period December, 2014 to August, 2015. Any assessment proceedings in respect of transaction for the period December, 2014 till 31st March, 2015 would be impermissible in the light of Section 39 of the JVAT Act, 2005. However, it may be open for the respondent authorities to undertake such assessment for the period 1st April, 2015 till August, 2015 with the rider contained in Section 38 & 39 of the JVAT Act, 2005. We do not wish to observe any further in this regard. However, having regard to the facts and circumstances of the case and the discussions made hereinabove, the order of rejection of claim of refund by respondent no. 3 dated 1st September, 2016 (Annexure-4) and the order of learned Commercial Taxes Tribunal dated 31st October, 2017 (Annexure-8) upholding the same cannot be sustained in the eye of law Accordingly, they are set aside. The matter is remitted to the respondent no. 3, Joint Commissioner of Commercial Taxes (Admin), Ranchi to consider the claim of refund of the petitioner in accordance with law within a period of six weeks from today. Petitioner should appear before the respondent no. 3 on 15th February, 2021 with the relevant records.

9. The writ petition is allowed in the manner and to the extent indicated hereinabove. However, we make it clear that any observations made hereinabove, shall not prejudice the case of the parties while considering the claim of refund.

**(Aparesh Kumar Singh, J.)**

**(Anubha Rawat Choudhary, J.)**

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