

GIB/JK/TARAPORE/17-12-2019/HC-107**High Court Category :** Input Tax Credit**State :** Jharkhand**Order No.:** GIB/JK/TARAPORE/17-12-2019/HC-107**Name of Entry :**
Tarapore & Company**Date :** 17-12-2019**Breif Issue :****Facts & Issue of the case**

The petitioner "M/S. Tarapore & Company" is aggrieved by order passed by the respondent Assistant Commissioner of Commercial Taxes, Urban Circle, Jamshedpur, whereby the claim of Input Tax Credit of the petitioner firm has been rejected and interest has been imposed upon the petitioner firm, as provided under Section 30 of the Jharkhand Value Added Tax Act, 2005. The petitioner has also challenged the demand notice and the garnishee orders issued by the Sales Tax Officer, Jamshedpur Circle, whereby the Banks, in which the petitioner firm is having their accounts, were asked by the respondent authority to recover the amount of Rs. 20,21,801/- from the account of the petitioner and deposit the same in the Government Treasury. The amount has already been withdrawn from the account of the petitioner firm, and deposited in the Government Treasury.

The petitioner firm, which is engaged in the work contract, and Sanatan Enterprises, both are registered under the JVAT Act. For the purposes of carrying out its business, the petitioner firm made certain purchases in the financial Year 2015-16, from M/s Sanatan Enterprises, for the total amount of Rs.1,08,91,031.81, on which the petitioner also made the payment of VAT to the seller, amounting to Rs. 11,89,744.13, for which the tax invoices were also issued to the petitioner firm by the selling dealer, i.e., M/s Sanatan Enterprises. In the return filed by the petitioner firm, the said amount of Rs.11,89,744.13 was claimed as ITC. However, during the scrutiny of the returns, it was found that the said amount did not reflect in the MIS as regards the return filed by M/s Sanatan Enterprises, from which, purchases were made. Accordingly, the notice under Section 33 of the JVAT Act was issued to the petitioner firm on 21.08.2017. In reply to the notice, the petitioner produced all the necessary documents, including tax invoices W.P. (T) No. 773 of 2018 and connected matter supplied to it by the selling dealer, in order to satisfy the Assessing Authority that while making the purchases, the petitioner had discharged all the tax liabilities, and it was the selling dealer, who had not deposited the tax in the Government Treasury, for which the petitioner firm was not at all at fault.

The Assistant Commissioner Commercial Taxes, Urban Circle, Jamshedpur, came to the conclusion that the petitioner firm had made the purchases from M/s Sanatan Enterprises for the amount showed in this return, and had also paid the amount of VAT to the selling dealer, and it was in fact the selling dealer, who had not filed its return and deposited the amount in the Government Treasury. As such,

the Assessing Authority disallowed the claim of ITC of Rs. 11,89,744.13, made by the petitioner firm, and interest was imposed upon the petitioner.

Decision of Advance Ruling Authority :**Decision**

The Court quashed the order and held that it is apparent that the amount of tax and interest has been saddled upon the petitioner firm for no fault on part of the petitioner, but solely due to the fault of the selling dealer and it was not within the competency of the petitioner to compel the selling dealer to file the return within the stipulated time, and deposit the tax collected from the petitioner in the Government Treasury and further directed that the total amount of Rs.20,21,801/- realised from the petitioner by way of garnishee order, be refunded to the petitioner within a period of three months from the date of production / communication of this order.