IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10355 of 2015

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Bata India Limited, having its office at Bataganj, P.O. & P.S. Digha, District- Patna through its Manager (Accounts) Sunil Kumar Mishra, son of Late Awadh Narayan Mishra, resident of Vivekananda Park, South East Patliputra Colony, P.O. and P.S. Patliputra Colony, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna
2. Asstt. Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.10350 of 2015

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Bata India Limited, having its office at Bataganj, P.O. & P.S. Digha, District- Patna through its Manager (Accounts) Sunil Kumar Mishra, son of Late Awadh Narayan Mishra, resident of Vivekananda Park, South East Patliputra Colony, P.O. and P.S. Patliputra Colony, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna
2. Asstt. Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.10320 of 2015

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Bata India Limited, having its office at Bataganj, P.O. & P.S. Digha, District- Patna through its Manager (Accounts) Sunil Kumar Mishra, son of Late Awadh Narayan Mishra, resident of Vivekananda Park, South East Patliputra Colony, P.O. and P.S. Patliputra Colony, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna
2. Asstt. Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.10259 of 2015

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Bata India Limited, having its office at Bataganj, P.O. & P.S. Digha, District- Patna through its Manager (Accounts) Sunil Kumar Mishra, son of Late Awadh Narayan Mishra, resident of Vivekananda Park, South East Patliputra Colony, P.O. and P.S. Patliputra Colony, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having

its office at Vikas Bhawan, Bailey Road, Patna
2. Asstt. Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.10898 of 2015

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Bata India Limited, having its office at Bataganj, P.O. & P.S. Digha, District- Patna through its Manager (Accounts) Sunil Kumar Mishra, son of Late Awadh Narayan Mishra, resident of Vivekananda Park, South East Patliputra Colony, P.O. and P.S. Patliputra Colony, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna
2. Asstt. Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy
Mrs. Manju Jha
Mr. P.K.Mishra

For the Respondent/s : Mr. Raj Nandan Prasad, SC-9
Mr. Gopal Krishna, AC to SC-9
Mr. Rakesh Kumar, AC to SC -9

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

And

HONOURABLE MR. JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 24-07-2015

These writ applications have been filed for quashing the separate orders dated 17.2.2015 passed for the periods 2009-10 till 2013-14 by the Assistant Commissioner, Commercial Taxes, Special Circle, Patna under Section 31 of the Bihar Value added Tax Act, 2005.

The proceedings under Section 31 of the Act were initiated on the basis of inspection made at the Fraser Road Showroom of the petitioner in which it was found that 89% of the products of the petitioner which have been classified under entry 92 as chappals and sandals exclusively of plastic Hawai Chappal and various other parts and components thereof do not fall under the said category for which lower rate of tax have been paid by the petitioner.

It is admitted by learned counsel for the petitioner that on account of the change over of the accounts of the petitioner from legacy system (Unix Programme) and up-gradation of system to SAP software, the petitioner was not in a position to provide the data for the different establishments of the petitioner numbering about 40 in the State despite 4-5 adjournments of approximately a week at a time each granted to the petitioner. It is submitted that the up-gradation being carried out by a leading computer software Company, orally submitted by learned counsel for the petitioner as Accenture, the implementation of the same failed after considerable efforts to install it and ultimately the petitioner has reverted to its old legacy system (Unix Programme) and the petitioner is now in a position to furnish the details to the Assessing Officer. However, in the meantime, the impugned order has been passed without taking into consideration the actual state of affairs prevailing and relying upon the data with respect to the largest showroom of the petitioner in the State located at Fraser Road in the town of Patna whereas the same position does not exist with regard to smaller outlets within Patna as also in other urban and semi-urban areas.

It is urged by learned counsel that on account of such situation, the order passed by the Assessing Officer does not reflect correct state of affairs and a reputed company like the petitioner would not deliberately withhold facts and details from the Assessing Officer except under the circumstances which were beyond the control of the company.

Learned Standing Counsel No. 9, on the other hand, submits that apart from the failure to produce the details of accounts, the petitioner had also not produced the samples claiming in the writ application that a petition has been filed under Section 77 of the Bihar Value Added Tax Act before the Commissioner which is not a valid ground.

On a consideration of the facts and circumstances of the case, we are of the view that the petitioner ought to have produced the samples before the Assessing Officer and since admittedly the application under Section 77 of the Act had been filed after the issuance of notice under Section 31, the same could not have been used as an excuse for not producing the same before the Assessing Officer competent to decide regarding the applicability of entry 92 of Schedule 3 of the Act.

Be that as it may, we are of the view that the petitioner was faced with a genuine difficulty on account of the upgradation of the accounting system which was going on and which ultimately failed and thus the same led to a presumption by the Assessing Officer which may not be in accordance with the actual state of affairs with regard to the sale, etc., prevailing in the different outlets of the petitioner.

In the above circumstances, we are of the view that the matters must go back to the Assessing Officer to re-assess in accordance with law after giving opportunity to the petitioner. The petitioner must co-operate in the assessment/re-assessment by producing all the necessary accounts as sought for by the Assessing Officer and also by producing the samples, etc., sought by the Assessing Officer without any attempt to delay the process of assessment.

All the writ applications are, accordingly, allowed. The orders of assessment dated 17.2.2015 for the periods in question are quashed and the matter is remanded to the Assistant Commissioner, Commercial Taxes, Bihar, Patna, respondent no. 2

to reconsider the same in accordance with law.

It is made clear that no further notice shall be required to be issued to the petitioner and the petitioner shall present itself before the respondent no. 2 on 7th August, 2015 at 11.00 A.M. who shall proceed thereafter in the matter in accordance with law.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Amaresh Kumar Lal, J)

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