IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10551 of 2015

==

M/s. Mahadev Enclave Pvt. Ltd. a registered company having its registered office at B- 37, Ayodhya Marg, Hanuman Nagar, Jaipur, Rajasthan through its authorized representative Rajendra Kumar S/o Mangtu Ram R/o- Village and P.O. Kodha, Tahsil- Rawatsar, District- Hanumangarh.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner Department of Commercial Taxes, New Secretariat Bailey Road, Patna
2. The Deputy Commissioner of Commercial Taxes Incharge Bhagalpur Commercial Taxes Circle, Bhagalpur.
3. The Principal Secretary cum Commissioner, Departmenr o Mines & Geology, Govt. of Bihar, Patna.
4. The Mines Inspector, Banka.

.... Respondents

==

Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr. Raj Nandan Prasad, S.C. 9 with
Mr. Gopal Krishna, AC to S.C. 9

==

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

4 18-08-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 25.6.2015 passed by the Deputy Commissioner of Commercial Taxes (In-charge), Bhagalpur under Section 39(2) of the Bihar Value Added Tax Act, 2005 raising a demand for a sum of Rs.47,34,905/- for the financial year 2014-15 and for the consequential notice of demand of the same date and other consequential relief.

The petitioner-Company has been awarded settlement of sand ghats at Banka for the period from 1.1.2015 to 31.12.2019 on the basis of a tender in which he had participated. The period followed by the officials of the Department of Mines and Geology with regard to the settlement of sand ghats is calendar year. In terms of the settlement the petitioner was required to deposit tax under the Bihar VAT Act also. Because of overlapping of the period of three months between the calendar year and financial year, which is the system followed by the Commercial Tax Department, the challan was filled only for the financial year 2015-16, whereas it also related to the payment of 4th quarter for the period of 2014-15 and deposited on 31.12.2014. The petitioner while filing his return as a registered dealer under the Bihar VAT Act claimed credit for the amount paid with regard to the last quarter of the financial year 2014-15. The same, however, was not accepted by the respondent No.2 and the impugned order dated 25.6.2015 has accordingly been passed directing the petitioner to pay the aforesaid amount which included interest of Rs.2.5 lacs.

Learned counsel for the petitioner submits that in view of the aforesaid confusion of two separate years, namely, calendar year and financial year being followed by the two departments of the State Government, the Commercial Tax Department ought not to have relied upon such technicality and ought to have accepted the payment made by the petitioner, the deposit of which is not disputed and adjusted the amount for the 4th quarter of the financial year 2014-15 and not imposed any interest. For the said reason it is submitted that the order dated 25.6.2015 and the consequential demand ought to be quashed.

In the counter affidavit filed on behalf of the Commercial Tax Department it is submitted that the aforesaid facts are stated to be correct but the blame is put upon incomplete filling up of challan on behalf of the petitioner which led to the passing of the aforesaid order as the software of the department reflected the payment for the tax period from 1.4.2015 to 30.4.2015 and only in the said circumstances the impugned order has been passed. It is further submitted in the counter affidavit that this Court may pass order on the point of accepting the deposit of Rs.54,84,500/- deposited on 31.12.2014 as the amount of tax payable for the 4th quarter of the financial year 2014-15.

On a consideration of the facts and circumstances of the case and in view of the aforesaid stand of the respondents, the impugned order dated 25.6.2015 and the consequential demand are quashed and it is directed that the deposit made by the petitioner of Rs.54,84,500/- on 31.12.2014 be treated as a deposit both for the 4^{th} quarter of the financial year 2014-15 and for the succeeding 1^{st} quarter of 2015-16 and after giving the benefit of adjustment of the tax payable for the 4^{th} quarter of 2014-15, the balance amount should be adjusted against the deposit to be made for the 1^{st} quarter of financial year 2015-16.

The writ application is, accordingly, disposed of with the aforesaid directions and observations.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

spal/-

U			