IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1 of 2015

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M/s Nagdeo Traders P.O. & P.S. Sonbarsa, District-Sitamarhi through its authorized signatory Bhupendra Nath, son of Late Devendra Prasad, resident of Village and P.O.-Chakmahila, P.S. & District-Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner of Commercial Taxes, Vikas Bhawan, Bailey Road, Patna.
2. The Secretary, Commercial Taxes Tribunal, Bihar, Patna having its office at Judges Court Road, Patna.
3. Joint Commissioner of Commercial Taxes (Appeal), Tirhut Division, Muzaffarpur.
4. The Commercial Taxes Officer, Sitamarhi Circle, Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioners : Mr. S.D. Sanjay, Senior Advocate
Mr. Alok Kumar Agrawal, Advocate

For the Respondents : Mr. Vikas Kumar, J.C. to P.A.A.G.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 21-01-2015

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 17.7.2014 passed by the Commercial Taxes Tribunal, Bihar, Patna by which the revision application filed by the petitioner, being Revision Case No.MZ-118/2007 relating to the assessment period 1999-2000, was rejected and also for quashing the order dated 24.2.2006 passed by the Joint Commissioner of Commercial Taxes (Appeal), Tirhut Division, Muzaffarpur and the order dated 26.3.2004 passed by the

Commercial Tax Officer, Sitamarhi Circle, Sitamarhi, by which he has imposed tax liability to the tune of Rs.2,10,000/- and also penalty of Rs.1,300/- under Section 16 (8) of the Bihar Finance Act, 1981 and other consequential reliefs.

The case of the petitioner is that it is a whole sale dealer of the Indian Oil Corporation in the distribution of K. Oil which is a controlled commodity, for which licences have to be obtained under the Essential Commodities Act and allocations are also made by the District Magistrate.

It is submitted by learned counsel for the petitioner that the petitioner filed its return for the period 1999-2000 showing gross demand over Rs.34,56,885/- in the Commercial Taxes, Sitamarhi Circle. Since the goods in question had already been taxed at the first point of sale made by the Indian Oil Corporation and the tax was charged in the bill, hence, the petitioner had no further liability to pay any tax under the Bihar Finance Act, 1981 subject to the petitioner producing a declaration in Form IX-C issued by the Indian Oil Corporation before the Commercial Taxes authorities.

It is further submitted by learned counsel for the petitioner that the petitioner had been approaching the Commercial Taxes Officer from time to time seeking more time to file the said return but he could not get Form IX-C from the Oil Company.

However, the Assessing Officer passed the ex pare order dated 26.3.2004, by which he enhanced the GTO to Rs.35,00,000/- and assessed the tax at Rs. 2,10,000/- and at the same time imposed the penalty of Rs.1,300/-. Aggrieved by the order dated 26.3.2004, the petitioner filed an appeal before the Joint Commissioner of Commercial Taxes (Appeal), Tirhut Division, Muzaffarpur, being Appeal Case No.ST/ST-13/2005-06, which was dismissed by order dated 24.2.2006 at the stage of admission on account of non-removal of defects. The petitioner could receive the declaration in Form IX-C after the date of assessment but even the said declaration did not contain the signature of the competent authority of the Indian Oil Corporation and had to be sent back to get the signature. The petitioner, therefore, against the order dated 24.2.2006 passed by the Joint Commissioner of Commercial Taxes, Tirhut Division, Muzafarrpur, filed a revision application before the Commercial Taxes Tribunal, Bihar, which was numbered as Revision Case No.MZ-118/2007 making the prayer that the only issue to be considered was non-production of declaration in Form IX-C on the date of assessment and seeking an opportunity to produce the same before the Assessing Authority, as the subsequent sale effected by the petitioner was exempted during the period in question.

However, by the impugned order dated 17.7.2014, the

Tribunal has rejected the revision application after holding that the petitioner had failed to produce the correct facts before the Appellate Authority and even before the Tribunal it has failed to produce the correct facts and is acting by suppressing and misinterpreting the facts.

Learned counsel for the petitioner submits that the ground for rejection by the Appellate Authority was non-filing of 20% of the demand as also non-filing of the original copy of the demand notice and the assessment order.

Learned counsel for the petitioner submits that all such papers had been entrusted to the petitioner’s counsel who was conducting the appeal and as a matter of fact the 20% amount for the purpose of maintaining the appeal had already been deposited by Chalan dated 9.1.2006, being Rs.42,000/-, much before the order dated 24.2.2006 passed by the Joint Commissioner (Appeal) and thus for no fault of the petitioner, the appeal got dismissed.

It is also the stand of learned counsel for the petitioner that the Tribunal has completely failed to consider the very basic issue that the petitioner had obtained the declaration in Form IX-C subsequently and the fact of deposit of 20% had also been placed before the Tribunal, which was referred in its order, but giving a go-by to such a relevant fact, the Tribunal has dismissed the revision application holding that the petitioner is guilty of suppression of facts, whereas there was no question of any suppression considering the fact that the petitioner had taken all steps in the matter both at the stage of appeal and at the stage of revision.

Learned counsel for the petitioner further submits that it would be unconscionable for the State to charge and retain tax twice when the same is not at all permissible under the provisions of the Bihar Finance Act and on mere technicalities, the petitioner ought not to have been non-suited by the Appellate Authority or by the Tribunal.

Learned counsel for the State, on the other hand, submits that the writ application itself is not maintainable in view of the provisions of Section 79 of the Bihar Value Added Tax Act, 2005 under which an appeal would lie against the order of the Tribunal and for the said reason, the writ application should be dismissed as not maintainable. Apart from the same, learned counsel for the State has supported the order of the Tribunal stating that the same reflects the correct position.

So far as the question of statutory alternative remedy is concerned, it has been repeatedly held by the Supreme Court and by this Court that the same does not absolutely bar the exercise of jurisdiction under Article 226 of the Constitution of India. It is true that under Section 79 of the Value Added Tax Act, 2005, even an order passed under the Bihar Finance Act, 1981, which has been repealed by Section 94 of the subsequent Act, would be appealable but the appeal can be heard only on the satisfaction that a substantial question of law is involved in the case. In the present matter, the issue is not related to the merit of the matter rather it relates to non-consideration of the basic point either by the Appellate Authority or by the Revisional Authority for whatever reason, which is whether in view of the fact that the declaration in Form IX-C had been issued by the Indian Oil Corporation to the petitioner after the assessment order was passed, there can be any liability to pay tax by the petitioner. It is not the purpose of any of the taxing statutes to saddle a person with tax beyond what is provided by the same. It is evident that if Form IX-C had been produced by the petitioner before the Assessing Authority, there was no question of levy of any tax or penalty upon the same.

However, the petitioner could not do so, as the authorities of the Indian Oil Corporation had failed to issue the said Form IX-C to the petitioner which is dated 25.3.2004 and had reached the petitioner after the order dated 26.3.2004 was passed by the Commercial Tax Officer and even thereafter the same had required correction of mistake as it did not contain the signature of the authorized officer of the Indian Oil Corporation. In such circumstances, it is not the petitioner who can be blamed rather Form IX-C was delivered to the petitioner after passing of the assessment order and the Appellate Authority and the Revisional should have considered that aspect of the matter and not taken such harsh view as has been taken in the present matter.

We are also of the view that the existence of statutory alternative remedy does not always bar the exercise of power by this Court under Article 226 of the Constitution of India and in the given facts, it is a fit case for quashing and setting aside the order dated 17.7.2014, 24.2.2006 and 26.3.2004 passed by the Commercial Tax Tribunal, Joint Commissioner of Commercial Taxes (Appeal) and the Commercial Tax Officer respectively and remanding the matter before the Commercial Tax Officer, Sitamarhi for fresh order in accordance with law. It is ordered accordingly.

However, considering the fact that the petitioner, whether by himself or on account of his counsel, had been negligent in pursuing the appeal and to some extent before the Tribunal also, the petitioner shall pay a cost of Rs.5,000/- to the State.

V.P.Sinha/-

(Ramesh Kumar Datta, J)

(Vikash Jain, J)

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