IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16096 of 2015

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A C M E Therapeutics (I) Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at 305-D, Shehnai Garden, A.B. Road, Indore -452001(M.P) and Branch office at G-106, P.C. Colony, Kankarbagh, P.O. + P.S. Kankarbagh, District- Patna through its Director, Gopal Krishna, son of Late S.R. Singh, resident of Vimlayan, A-77, P.C. Colony, P.O. + P.S. Kankarbagh, District- Patna

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar having its office at Vikas Bhawan, Bailey Road, Patna.
2. Dy. Commissioner of Commercial Taxes, South Circle, Patna
3. Asst. Commissioner of Commercial Taxes, South Circle, Patna

.... Respondents

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with

Civil Writ Jurisdiction Case No.16530 of 2015

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ACME Therapeutics (I) Pvt. Ltd., a comapny incorpoarted under the Companies Act, 1956 having its registered office at 305-D, Shehnai Garden, A.B. Road, Indore- 452001 (M.P.) and Branch Office at G-106, P.C. Colony, Kankarbagh, P.O.+P.S. Kankarbagh, District- Patna through its Director, Gopal Krishna, son of Late S.R. Singh resident of Vimlayan, A-77, P.C. Colony, P.O.+P.S. Kankarbagh, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, having its office at Vikash Bhawan, Bailey Road, Patna.
2. Asstt. Commissioner of Commercial taxes, South Circle, Patna.

.... Respondents

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with

Civil Writ Jurisdiction Case No.16045 of 2015

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A C M E Therapeutics (I) Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at 305-D, Shehnai Garden, A.B. Road, Indore -452001(M.P) and Branch office at G-106, P.C. Colony, Kankarbagh, P.O. + P.S. Kankarbagh, District- Patna through its Director, Gopal Krishna, son of Late S.R. Singh, resident of Vimlayan, A-77, P.C. Colony, P.O. + P.S. Kankarbagh, District- Patna.

.... Petitioner

Versus

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

3. Asst. Commissioner of Commercial Taxes, South Circle, Patna

.... Respondents

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with

Civil Writ Jurisdiction Case No.16368 of 2015

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ACME Therapeutics (I) Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at 305-D, Shehnai Garden, A. B. Road, Indore-452001 (M.P.) and Branch Office at G-106, P.C. Colony, Kankarbagh, P.O. + P.S. Kankarbagh, District- Patna through its Director, Gopal Krishna, son of Late S.R. Singh, resident of Vimlayan, A-77, P.C. Colony, P.O.+P.S. Kankarbagh, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna.
2. Dy. Commissioner of Commercial Taxes, South Circle, Patna.
3. Asst. Commissioner of Commercial Taxes, South Circle, Patna.

.... Respondents

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with

Civil Writ Jurisdiction Case No.16568 of 2015

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ACME Therapeutics (I) Pvt. Ltd., a comapny incorpoarted under the Companies Act, 1956 having its registered office at 305-D, Shehnai Garden, A.B. Road, Indore- 452001 (M.P.) and Branch Office at G-106, P.C. Colony, Kankarbagh, P.O.+P.S. Kankarbagh, District- Patna through its Director, Gopal Krishna, son of Late S.R. Singh resident of Vimlayan, A-77, P.C. Colony, P.O.+P.S. Kankarbagh, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, having its office at Vikash Bhawan, Bailey Road, Patna.
2. Deputy Commissioner of Commercial taxes, South Circle, Patna.
3. Asstt. Commissioner of Commercial taxes, South Circle, Patna.

.... Respondents

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with

Civil Writ Jurisdiction Case No.16678 of 2015

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ACME Therapeutics (I) Pvt. Ltd. a company incorporated under the Companies Act, 1956 having its registered office at 305-D, Shehna Garden, A.B. Road, Indore- 452001 (M.P.) and Branch Office at G-106, P.C. Colony, Kankarbagh, P.O. +P.S. Kankarbagh, District- Patna through its Director, Gopal Krishna, son of Late S.R. Singh, resident of Vimlayan, A-77, P.C. Colony, P.O.+P.S. Kankarbagh, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna.
2. Asstt. Commissioner of Commercial taxes, South Circle, Patna.

.... Respondents

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with

Civil Writ Jurisdiction Case No.16716 of 2015

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ACME Therapeutics (I) Pvt. Ltd. a company incorporated under the Companies Act, 1956 having its registered office at 305-D, Shehna Garden, A.B. Road, Indore- 452001 (M.P.) and Branch Office at G-106, P.C. Colony, Kankarbagh, P.O. +P.S. Kankarbagh, District- Patna through its Director, Gopal Krishna, son of Late S.R. Singh, resident of Vimlayan, A-77, P.C. Colony, P.O.+P.S. Kankarbagh, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna.
2. Asstt. Commissioner of Commercial taxes, South Circle, Patna.

.... Respondents

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with

Civil Writ Jurisdiction Case No.16943 of 2015

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A C M E Therapeutics (I) Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at 305-D, Shehnai Garden, A.B. Road, Indore - 452001 (M.P.) and Branch Office at G-106, P.C. Colony, Kankarbagh, P.O. + P.S. Kankarbagh, District - Patna through its Director, Gopal Krishna, son of Late S.R. Singh, resident of Vimlayan, A - 77, P.C. Colony, P.O. + P.S. Kankarbagh, District - Patna.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna, at Vikas Bhawan, Bailey Road, Patna.
2. Asstt. Commissioner of Commercial Taxes, South Circle, Patna.

.... Respondents

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with

Civil Writ Jurisdiction Case No.17281 of 2015

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ACME Therapeutics (I) Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at 305-D, Shehnai Garden, A. B> Road, Indore-452001 (M.P.) and Branch Office at G-106, P.C. Colony, Kankarbagh, P.O. + P.S. Kankarbagh, District- Patna through its Director, Gopal Krishna, son of Late S. R. Singh, resident of Vimlayan, A-

77, P.C. Colony, P.O.+P.S. Kankarbagh, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, having its office at Vikash Bhawan, Bailey Road, Patna.
2. Dy. Commissioner of Commercial Taxes, South Circle, Patna.
3. Asstt. Commissioner of Commercial taxes, South Circle, Patna.

.... Respondents

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Appearance :
(In all the cases)
For the Petitioner/s : Mr. D.V.Pathy with Ms. Manju Jha, Advocates
For the Respondent/s :Mr. Vikash Kumar, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

6 17-12-2015 Heard learned counsel for the petitioner in all the cases and learned counsel for the State.

The first of these writ applications, namely, CWJC No. 16096 of 2015, is directed against the notice dated 22.9.2015 issued under Section 47 of the Bihar Value Added Tax Act, 2005 for recovery of the whole of the amount in dispute for the periods 2010-11 to 2013-14 with regard to the assessment order passed under Bihar VAT Act as also Central Sales Tax Act.

Four writ applications, namely, CWJC Nos. 16943, 16716, 16678 and 16530, all of 2015 respectively for the four periods, have been filed challenging the assessment orders passed under Section 31 of the Bihar VAT Act read with the provisions of the Central Sales Tax Act. So far as the assessments under the Central Sales Tax Act are concerned, learned counsel for the petitioner submits that the assessments made therein are solely on account of non-production of the Forms 'C' and 'F' by the petitioner and by now the petitioner has obtained all the forms and is in a position to produce them before the Assessing Officer which would clearly show the nature of the transactions.

In the aforesaid circumstances, all the writ applications are allowed and the matter is remanded to the Assessing Officer to pass fresh orders after permitting the petitioner to file the Forms 'C' and 'F' as may be available with the petitioner and after taking the same into consideration and, in case, for certain transactions the said forms are not available, it shall be open to the petitioner to satisfy the Assessing Officer on the basis of the materials in its possession regarding the nature of the transactions as laid down by the Apex Court in the case of Ambica Steels Ltd. vs. State of U.P. & Ors. : (2009) 14 SCC 309.

So far as remaining four writ applications, namely, CWJC Nos. 16045, 16368, 16568 and 17281, all of 2015, are concerned, it is submitted by learned counsel for the petitioner that the assessment orders are suffering from grave error as the assessment has been made on the basis of MRP and not actual sale price, since this Court in CWJC No. 18626 of 2014 (M/s. Mapra Laboratories Pvt. Ltd. vs. The Commercial Taxes Officer, Special Circle, Patna & Anr.) and its analogous cases by order dated 4.5.2015 had declared the provisions of Section 15(5) of the Bihar Value Added Tax Act, 2005 as ultra vires and thus it is not open to the respondent authorities to make any calculation on the basis of MRP.

It is also the stand of learned counsel for the petitioner that the Assessing Authority had no authority or jurisdiction, while making assessment of profit under Section 31, in the absence of any material on record and further he could not have disallowed exemptions on Schedule-1 goods. Moreover, it is submitted that what was within the competence of the Assessing Officer at the stage of Section 25 could not be done by the Assessing Officer in a proceeding under Section 31 of the Act in view of what has been held by this Court in CWJC No. 7436 of 2015 [Unitech Wireless (Tamilnadu) Pvt. Ltd. vs. The State of Bihar & Ors.] and its analogous cases by order dated 11.8.2015, in which this Court has clearly held that in a proceeding under Section 31 of the Act it was not open to the Assessing Officer to have proceeded in the manner as if he was making an initial scrutiny and assessment under Section 25 of the Act. We are in agreement with the submission of learned counsel for the petitioner with regard to the issue of assessment having been made on the basis of MRP that on account of striking down of the provisions of Section 15(5) of the Act, it is not open to any authority under the Bihar VAT Act to levy tax on the basis of MRP, the matters have to be remanded giving liberty to the petitioner to raise all the issues before the Assessing Officer himself.

All the impugned orders of assessment under Section 31 of the Bihar VAT Act are, accordingly, quashed and the matters are remanded to the Assessing Authority to consider them afresh in accordance with law keeping in view the law laid down by this Court, after meeting the objections raised by the petitioner. In view of the quashing of the orders of assessment, the notice dated 22.9.2015 under Section 47 of the Act also cannot stand. It is also quashed.

All the writ applications are, accordingly, allowed with the above directions and observations.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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