IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17304 of 2014

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M/s Shiv Shiva Readymade Dresses through its proprietor Ram Balak Goswami S/o Late Bhuneshwar Goswami Resident of Ward No. 07, Station Road, P.S. AND District Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Khagaria.
2. The Commissioner of Commercial taxes, Bihar, Patna.
3. The Additional Commissioners, Commercial Taxes, Bihar, Patna.
4. The Assistant Commissioner, Commercial Taxes, Khagaria Circle, Khagaria.
5. The Commercial Tax Officer, Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Prasad
For the Respondent/s : Mr. Dinbandhu Singh, G.P.9
Mr. Sandip Singh, A.C. to G.P.9.

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

7 15-01-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 15.5.2012 passed by the Additional Commissioner, Commercial Taxes, Bihar, by which he has dismissed the Revision Case No.CC (5)179/2011-12 filed under Section 74 of the Bihar Value Added Tax Act, 2005 and affirmed the order of respondent No.5, Commercial Tax Officer, Khagaria passed on 23.6.2011, by which the tax and penalty to the tune of Rs.2,88,000/- was imposed upon the petitioner under the provisions of Section 28 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the 'Act').

An inspection was made in the premises purported to be of M/s. Shiv Shiva Readymade Dresses at Station Road, Khagaria showing it as seller of readymade garments. It was stated in the inspection report dated 18.6.2011 that the shop in question is a permanent readymade shop and apart from the owner two employees were working and in a period of twenty minutes about 12-14 customers had come to make the purchase but they were not given the cash memo and in the cash books, an amount of approximately Rs.3000/- was found. It was also stated that no books of accounts were being maintained. It was also reported that the shop was running for the last three years and was still unregistered and considering the sales the shop was fit for registration, but deliberately the same was not registered under the provisions of the Bihar Value Added Tax Act, 2005; accordingly, proceedings under Section 28 of the Act were required to be taken against him.

The petitioner was directed to appear in the office of the Assistant Commissioner, Commercial Taxes with all the documents/evidence on 23.6.2011 to show cause as to why proceedings under Section 28 of the Act be not initiated against him. The petitioner appeared on that date but unfortunately vakalatnama was filed in the name of M/s. Shiv Shiva Traders. Before the authority, the stand was taken that the petitioner had obtained a certificate of registration under Section 19 of the Act and allotted TIN number on 9.10.2010, the number being 10462801079 and was liable to pay tax with effect from 30.9.2010.

However, by the impugned order dated 23.6.2011, it was held that the petitioner had filed an application and vakalatnama in the name of Shiv Shiva Traders, whereas the premises inspected was in the name of Shiv Shiva Readymade Dresses and thus it was evident that the owner of the shop, namely, Ram Balak Goswami, had established two shops, namely, M/s. Shiv Shiva Traders and Shiv Shiva Readymade Dresses and the latter shop being a new one and in view of the inspection report, it was estimated that in two years the petitioner must have made turnover of a sale of Rs.36,00,000 and taking a minimum amount the tax was calculated at Rs.1,44,000/- and penalty of the same amount was imposed under Section 28 of the Act. Aggrieved by the same, the petitioner filed a revision before the Commissioner, Commercial Taxes, which has been dismissed by the impugned order dated 15.5.2012.

Learned counsel for the petitioner submits that the respondent-Commercial Tax officials have acted in the matter only to harass the petitioner, which is duly registered with the Commercial Tax Department and the shop itself was running under the name of Shiv Shiva Readymade Dresses and there was no other shop of any other name running at the said place. The noting of the name of Shiv Shiva Dresses was totally the fault of the inspecting authority and unfortunately the petitioner being an illiterate person his advocate also had filed the vakalatnama as Shiv Shiva Traders further confusing the matter, whereas it is evident from the report dated 13.12.2012 of the District Magistrate, Khagaria sent to the Chairman, Bihar Human Rights Commission that the petitioner's shop, namely, Shiv Shiva Readymade Dresses is there and there is no other shop in the name of Shiv Shiva Traders or Shiv Shiva Dresses at the said place.

Learned counsel for the petitioner urged that in view of the aforesaid clear and independent report of the District Magistrate, Khagaria, there could have been no question to treat the petitioner's premises as being either Shiv Shiva Traders or Shiv Shiva Dresses and treating the same as an unregistered shop, proceeding against it under Section 28 of the Bihar Value Added Tax Act having been started.

Learned counsel for the respondents, on the other hand, submits that the petitioner has alternative remedy before the Commercial Taxes Tribunal and thus the writ application filed by him ought not to be entertained.

It is further submitted that the petitioner had signed the inspection report and thus admitted everything including the name of the shop mentioned therein.

Learned counsel further contends that the petitioner himself having filed the vakalatnama in the name of Shiv Shiva Traders, the authorities of the Department cannot be held responsible for the same. Learned counsel has also sought to rely upon various averments made in the inspection report.

In our view, the report of the District Magistrate, Khagaria clearly goes to show that there was only one shop at the location, Station Road, Khagaria by the name of Shiv Shiva Readymade Dresses. It is also not in dispute that the petitioner has obtained registration certificate under the Bihar VAT Act and has TIN number duly allotted under the said Act by the name of Shiv Shiva Readymade Dresses. Once these two facts are taken into consideration, it is evident that the officers of the Commercial Tax Department have acted in this matter only to harass the petitioner with motive known only to them. If the basic fact remains that the shop was being run in the name of Shiv Shiva Readymade Dresses, which fact has been verified by an authority no less than the District Magistrate, Khagaria, then every statement made in the impugned order of the Commercial Tax Officer is based entirely on conjectures and surmises and does not have any basis to support the same. The fact that during the course of inspection, it was not made an issue that the petitioner had only paid an amount of Rs.500/- is not relevant for the purpose of initiation of proceedings under Section 28 of the Act. If it is a case of evasion of tax then appropriate provisions of the Bihar Value Added Tax ought to have been applied for proceedings against the petitioner but no action could have been taken under Section 28 of the Act treating the petitioner as a dealer having no registration certificate.

The order of the Additional Commissioner also does not advert to this aspect of the matter and has accordingly sought to support the illegal order passed by the Commercial Tax Officer, Khagaria Circle under Section 28 (1) of the Act.

Thus, in the light of the aforesaid discussions, the writ application is allowed. The order dated 15.5.2012 of the Additional Commissioner, Commercial Taxes and 23.6.2011 of the Commercial Tax Officer, Khagaria are both quashed.

V.P.Sinha/- **(Ramesh Kumar Datta, J)**

(Vikash Jain, J)

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