IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.470 of 2005

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Dabur India Limited, a Private Limited Company registered under the Companies Act having its registered office at 8/3Asaf Ali Road, New Delhi, through its Assistant Manager, authorized signatory R.K. Garg, son of Late Jagdish Prasad R/O IIF-149, Nehru Nagar, Gaziabad (U.P.)

.... Appellant

Versus

1. The State of Bihar
2. The Secretary-cum-Commissioenr, Commercial Taxes, Bihar
3. The Dy. Commissioenr, Commercial Taxes, Special Circle, Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Chitranjan Sinnha, Senior Advocate
Mr. Siddhartha Prasad
Miss. Sunja Nilambasi

For the State : Mr. Piyush Lall, A.C. to PAAG.

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

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 17-09-2015

Heard learned counsel for the appellant and learned counsel for the State-respondents.

The appeal was admitted for hearing noting that the substantial question of law raised on behalf of the appellant is whether the revenue authorities could treat the transaction in question to be that of inter-State sale when a branch office of Lucky Laboratories is said to have obtained the goods from Ghaziabad and has claimed to have sold the goods to the appellant within the State of Bihar.

While admitting the appeal, it was observed that the decision on the appeal would be subject to the decision on the preliminary objection raised by the State that no appeal is maintainable against the order of the Tribunal refusing to allow a second review application relying upon a decision of the Supreme Court in the case of C.I.T. vs. Bomay Dyeing Mfg. Co.: (1971) 82 ITR 892 (S.C.).

According to learned counsel for the State, after the rejection of the first review application, there was no remedy available with the Tribunal and only a reference under Section 48 then available to the appellant under the Bihar Finance Act could have been preferred, which was not done.

When the appeal was taken up for hearing, learned counsel for the State did not press the aforesaid preliminary objection but it was submitted by him that the substantial question of law raised on behalf of the appellant on the basis of which the appeal has been admitted for hearing does not at all arise in the present matter and the present appeal does not involve such question.

It is the stand of learned counsel for the State that the appeal has not been filed against the original order in revision passed by the Tribunal on 1.3.1995. Rather the appellant, instead of challenging the same before this Court by way of reference under Section 48 of the Bihar Finance Act, 1981, as it then existed, has preferred to file review application under Section 47 of the said Act before the Commercial Taxes Tribunal, which was rejected by order dated 7.9.1999. Even thereafter instead of challenging the original order dated 1.3.1995 passed by the Tribunal in revision, the appellant herein preferred a second review application against the order dated 7.9.1999, which has been dismissed by the impugned order dated 3.6.2005. It is, thus, submitted that it is not open in the present appeal to the appellant to take any ground which pertains to the order dated 1.3.1995 passed in revision, rather the petitioner must satisfy this Court regarding any substantial question of law which arises out of the order dated 3.6.2005 passed in the second review application for review of the order dated 7.9.1999.

Learned counsel for the appellant faced with the aforesaid situation sought to urge that even from the order dated 3.6.2005, the substantial question of law would be there that the Tribunal erred in holding that the provision of Section11 of the Act has not been over-looked.

Learned counsel for the State, on the other hand, submits that there was ample consideration of the contention regarding Section 11 of the Act in the impugned order and the contention of the petitioner was rejected.

On a consideration of the order dated 3.6.2005, we find that the question of mandatory provision of Section 11 of the Act raised on behalf of the appellant has been considered in detail with reference to the earlier decisions of the Tribunal as also the decision of the Supreme Court. The Tribunal also noted the consideration of the same in the original order dated 1.3.1995 passed in revision as also in the review judgment dated 7.9.1999 stating that the case laws reported in (1988) 3 SCC 58 and (1996) 9 SCC 499 were discussed in detail and the applicability of the ratios decided in these cases and came to the conclusion that the case laws cited do not help the petitioner and accordingly it was of the firm view that the Tribunal did not overlook the mandatory provision of Section 11 of the Act and has rightly opined that if M/s. Lucky Laboratories Ltd. had paid any tax treating its transaction as inter-State transaction it can seek redressal in proper forum according to law.

A review by its very nature has a limited scope and it is not that the reviewing authority sits in appeal over the order passed earlier.

From a consideration of the review judgment dated 3.6.2005 under challenge before us, we do not find that the fresh substantial question of law sought to be raised by the appellant has any substance in it.

We are also of the view that the substantial question of law raised on behalf of the appellant, which was taken note of by this Court while admitting the appeal, does not arise in the present appeal, as it is not an appeal against the revisional order dated 1.3.1995.

The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

V.P.Sinha/-

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