IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11133 of 2015

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United Sprits Limited, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at UB Tower, 24 Vittal Mallya Road, Bangalore-560 001 and factory at Hathidah, District- Patna through its Senior Manager (Accounts), Rajesh Kumar, son of Late Muneshwar Pandit, residing at the campus of United Spirits Limited, Hatidah, P.S. Hatidah, District-Patna

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary-cum- Commissioner of Commercial Taxes, Government of Bihar, Vikash Bhawan, Bailey Road, Patna
2. The Deputy Commissioner of Commercial Taxes, Barh Circle, Barh
3. The Assistant Commissioner of Commercial Taxes, Barh Circle, Barh
4. The Commercial Taxes Officer, Barh Circle, Barh

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Satyabir Bharti
Mr. Alok Chandra

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 AMARESH KUMAR LAL

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 31-07-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the assessment order dated 18.6.2015 and the consequential demand notice dated 19.6.2015 passed by the Commercial Taxes Officer, Barh Circle, Barh by which the entry tax liability of the petitioner has been assessed at Rs. 88,39,280.00 and penalty of 300% amounting to Rs. 2,65,17,840.00 for the period 2012-13 and for further consequential reliefs.

The basic stand of learned counsel for the petitioner is that a proceeding had been initiated under Section 33 of the Bihar VAT Act pursuant to an audit objection made by the office of the Comptroller and Auditor General in which it was stated that on examination of the relevant annual return as also the utilization statement of D-IX/Suvidha as well as declaration in form ‘C’, it was found that the petitioner had actually imported packing materials of papers such as cartoon, label, etc., and plastic worth Rs. 21,37,53,728.86/- during 2012-13 but no entry tax was admitted by it on these goods which has resulted in concealment of import value making the petitioner liable to entry tax and penalty under Section 31(2) of the Bihar VAT Act. Upon the same, notices were issued to the petitioner with respect to which the petitioner replied that the details of goods imported, rate of entry tax applicable and tax payable has been calculated in a separate annexure which was enclosed with the audit objection and sought the same to be provided to the petitioner. However, the said annexure was not given to the petitioner and instead without noting the facts correctly, the Assessing Officer, after lingering the matter for a long period of time, has passed the impugned order.

It is pointed out that no reference has been made to the reply to the show cause and the copy of annexure sought by it. Rather on 22.8.2014, the Commercial Taxes Officer had issued the notice under Section 33 fixing 11.9.2014 for hearing. Thereafter straightaway the final order was passed on 18.6.2015 giving reference to the date 11.9.2014 also without mentioning what had exactly happened in the meantime.

Learned counsel for the State is unable to show how such an order could have been passed without supplying necessary papers to the petitioner making statement that no action was taken by the petitioner when, as a matter of fact, the petitioner has not been given the necessary annexure and further the order was passed on 18.6.2012 making reference to the date fixed 11.9.2014 without issuing any further notice in the matter.

The writ application is, accordingly, allowed. The impugned assessment order dated 18.6.2015 and the consequential demand notice dated 19.6.2015 are quashed and the matter is remanded to the assessing authority to proceed afresh after supplying a copy of the annexures enclosed with the audit report and giving reasonable opportunity to the petitioner to be heard in the matter.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Amaresh Kumar Lal, J)

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