

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6114 of 2015

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M/s V Mart Retail Limited registered under the Indian Companies Act, 1956 having its principal place of business at R.R.Tower, D.T. Road , near Jain School , Ara Sadar, District - Bhojpur, (Bihar) through its authorized representative Rahul Kumar Singh, Son of Sri Awadhesh Singh, resident of Ashok Market, D.T. Road, Near Town Thana , Police Station- Town Thana, District- Bhojpur at Ara.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.
2. The Assistant Commissioner of Commercial Taxes, Kishanganj Circle, Kishanganj.

.... Respondents

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Appearance :

For the Petitioner : Mr. Jayanta Ray Chaudhury, Advocate.

For the Respondents : Mr. Sandeep Kumar, G.A. 8.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

5 16-10-2015 Heard learned counsel for the petitioner and learned counsel for the respondents.

This writ application has been preferred against the order dated 23.01.2015, passed by the Assistant Commissioner of Commercial Taxes, Kishanganj Circle, Kishanganj, respondent no. 2, under Section 28(1) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the 'Act') in connection with Case No. 01-U/S28/14-15, by which an amount of Rs. 6,30,000/- has been

assessed towards tax due and an amount of penalty equal to the tax assessed of Rs. 6,30,000/- has also been imposed and thus the petitioner has been made liable to make payment of Rs. 12,60,000/-.

The contention of the petitioner is that it is a Limited Company, registered with the Registrar of Companies and its principal place of business is at R.R. Tower, B.T. Road, near-Jain School, Ara Sadar, District-Bhojpur, and has got more places of business in the State of Bihar, situated in different circles of Commercial Taxes, including Kishanganj Circle. The further contention is that the petitioner is a registered Dealer, under the Act having VAT TIN No. 10050916069 and under Central Sales Tax Act, 1956 having CST TIN No. 10050883175 and under the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993 having ET TIN No. 10050784293.

In the year 2009, the petitioner opened its first retail store at Ara and got it registered under Shahabad Circle of Commercial Taxes, under the Act having VAT TIN No. 10163720053; thereafter, it opened another branch at Begusarai, which was also registered under Shahabad Circle vide amendment in the said certificate of Registration. The petitioner, later on, opened several retail store at different places in the State of Bihar and, therefore,



applied for registration under Rule 3(9)(a) of The Bihar Value Added Tax Rules, 2005(hereinafter referred to as the Rules, 2005) and as per the direction of the Commissioner, Commercial Taxes, it was registered in the Patliputra Circle, Patna, with effect from 01.04.2011. The petitioner opened its Kishanganj Retail Store on 04.12.2014 and informed the Circle In-charge of Patliputra Circle regarding the said additional place of business for the purpose of amendment of the certificate of registration under the Act.

On 06.12.2014 officers of Kishanganj Commercial Taxes Circle made inspection of the business premises of Kishanganj Branch of M/S. V-Mart Retail Limited (hereinafter referred to as the dealer). It is contended by the petitioner that during the course of inspection the person concerned of the dealer informed the inspecting officers that the dealer is already registered in Patliputra Circle of Commercial Taxes with effect from 01.04.2011 and this is one of the additional place of business of the dealer and the Circle In-charge of the Patliputra Circle has already been informed, in respect of the said additional place of business. They were also informed that the original certificate of registration has been submitted to the Office of the Commissioner, Commercial Taxes, for the purpose of amendment in the Registration Certificate. In spite of the said fact the petitioner received a notice



issued vide Process No. 1094 dated 30.12.2014, by which there was a direction to appear before the Assistant Commissioner, Commercial Taxes, Kishanganj Circle, Kishanganj on 12.01.2015. The Store Manager of the dealer, in pursuance to the said notice, appeared before the respondent no. 2 and submitted that the dealer is a registered dealer and the retail store situated at Kishanganj is its additional place of business and the dealer has already got a centralized registration under Rule 3(9)(a) of the Rules, 2005, with effect from 01.04.2011 and the original certificate of registration is submitted in the office of the Commissioner of Commercial Taxes for the purpose of amendment and sought further time in writing to produce the ledger book as was directed but the respondent no. 2 passed the order dated 23.01.2015 referred above in terms of Section 28(1) of the Act, treating the petitioner as an unregistered Dealer.

The petitioner has brought on record the certificate of registration under Section 19 of the Act vide Annexures-1, 3 and 4 of the writ petition.

A counter-affidavit has been filed by the respondents, stating therein that the petitioner's company at Kishanganj was not a registered company from the date of its opening till 05.02.2015, when it came to be added in the Vat amended certificate dated



05.02.2015(Annexure-1) and the order dated 23.01.2015, which is under challenge had already been passed prior to coming of Annexure-1 into existence and the petitioner's company at Kishanganj was an unregistered company from the date of inspection i.e., 06.12.2014 till 05.02.2015 and therefore, the penalty order passed under Section 28(1) of the Act is a valid order and well within jurisdiction. The further contention of the respondents is that the representative of the petitioner never disclosed about the registered status of the company nor they produced such evidence that original registration certificate was submitted in the Patliputra Circle for the purpose of amendment and on 22.01.2015 no one appeared before the prescribed authority. Thus from the date of inspection till the date of passing of the order the prescribed authority was never made to know that the company is a registered dealer and original registration certificate has been submitted in Patliputra Circle for the purpose of amendment.

Learned counsel for the petitioner submits that the petitioner is not such a dealer, evading registration, therefore, sub-section 1 of Section 28 of the Act is not applicable against the petitioner and further the respondent authority who has passed order impugned dated 23.01.2015 has no jurisdiction to pass such

order in terms of Section 28(1) of the Act for the reason that the dealer is already registered in Patliputra Circle, Commercial Taxes, Bihar, with effect from 01.04.2011 under sub-rule(9) (a) of Rule 3 of the Rules 2005.

Learned counsel for the respondents, on the other hand, submits that the petitioner never informed the inspecting officers that it being a registered dealer under the Act.

He also submits that Kishanganj Branch of the petitioner was indeed an unregistered dealer till the date i.e., 05.02.2015 of the amended certificate of registration.

The learned counsel for the respondents lastly submits that alternative remedy of appeal against the order under challenged, is also available to the petitioner, thus the writ application ought not to be entertained.

Now the points which arise for consideration before this Court are: whether Section 28(1) of the Act is applicable against the petitioner, particularly in the background of the fact that the dealer is already registered under Patliputra Circle, Commercial Taxes, in terms of Sub-Rule 9(a) of Rule 3 of the Rules, 2005 with effect from 01.04.2011 and whether the Assistant Commissioner, Commercial Taxes, Kishanganj Circle has got jurisdiction to pass the order impugned, in respect of the petitioner.

We may firstly notice the provision envisaged under Section 28(1) of the Bihar Value Added Tax Act, 2005, which reads thus:

“ 28. Assessment of Tax of dealers evading registration.”-(i) If upon information which has come into his possession, the prescribed authority is satisfied that reasonable grounds exist to believe that any dealer has been liable to pay tax under this act in respect of any period, and has never the less willfully failed to apply for grant of certificate of registration or having so applied failed to furnish any particulars or information required for the purpose of Section 19, the prescribed authority shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best of its judgment, the amount of tax due, if any, from the dealer in respect of such period and all subsequent period; and the prescribed authority may, direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum of 100/- rupees for every day of the period during which the dealer failed to apply of registration or failed to furnish any particulars or information required for the purpose of Section 19 or an amount equal to the amount of tax assessed whichever is higher; Provided that no proceeding for such assessment shall be initiated except before the expiry of two years from the expiry of the period to

which it relates; Provided further that a proceeding initiated under this sub-section shall be completed within a period of four years from the date of initiation.”

We may further notice the provision contained in sub-rule (9) (a) of Rule 3 of Bihar Value Added Tax Rules, 2005, which reads thus:

“(9) (a) In case of such dealers who have got more places of business than one, situated in different circles in Bihar, or in case of dealers having no fixed place of business in Bihar and who sales goods inside the State either direct or through Agents or Salesmen or otherwise, shall apply before the Commissioner or before the officer specially authorized in this behalf. After receipt of such application, the Commissioner or the officer specially authorized in this behalf shall direct the applicant to get himself registered in the circle specified in the direction.

(b) The provisions of Sub-Rule (1) to Sub-Rule(8) shall, apply mutatis mutandis to an application for registration under this sub-rule. ”

From the words and expressions used in Section 28(1) of the Act, it appears that for passing any order in terms of that



Section, the prescribed authority has to be satisfied that reasonable ground exists to believe that any dealer has been liable to pay tax under this Act, in respect of any period and has willfully failed to apply for grant of certificate of registration or having so applied, failed to furnish any particular or information required for the purposes of Section 19; thereafter, reasonable opportunity of hearing is to be given to such dealers by the prescribed authority before making assessment of tax due.

Firstly, we would consider the issue that whether Kishanganj Branch of M/S. V.MART RETAIL LTD. may be treated as a dealer for the purpose of assessment of tax due and imposing penalty in terms of Section 28(1) of the Act. It is evident from the facts noticed above that M/S V. MART RETAIL LTD. is a registered dealer having TIN VAT NO. 10050916069 under Patliputra Circle of Commercial Taxes, in terms of Sub-rule 9 (a) of Rule 3 of the Rules, 2005 which talks about 'registration of dealer'. Rule 3(3) of the Rule 2005 stipulates that an application for registration shall be filed before the Circle In-charge within whose jurisdiction the place of business of the dealer is situated, but on the other hand, Rule 3(9)(a) provides that such dealers who have got more places of business than one situated in different circles of Bihar shall apply before the Commissioner or before the

officer specially authorized in this behalf.

Considering the aforesaid provision we are of the view that the dealer(petitioner) was not required to make application for registration before the Circle In-charge of Commercial Tax, Kishanganj, rather he was required to make application before the Commissioner of Commercial Taxes for the purpose of amendment of the certificate of registration. The petitioner has submitted his application for amendment of certificate of registration, furnishing the information as required under Section 23 of the Act, whereupon the competent authority issued amended certificate of registration, in favour of the petitioner on 05.02.2015, wherein Kishanganj Branch of V. MART RETAIL LTD. is also mentioned.

We also find no substance in the submission of learned counsel for the respondents that the petitioner or its representative never informed the inspecting officers on the date of inspection about the dealer being centralized registered in Patliputra Circle because the inspection report which is on record vide Annexure-5 mentions in column (v) (k) that the In-charge of the business premises informed that the dealer is centralized registered; thus in that view of the matter the Assistant Commissioner of Commercial Tax, Kishanganj Circle, exceeded his jurisdiction and

illegally initiated Case No. 01/14-15 and passed the order dated 23.01.2015.

We would also like to notice the third proviso of Section 19 of the Act, which is a deeming clause. It says that if the dealer applies for grant of certificate of registration in the prescribed manner and that the application is duly filled in, as aforesaid, he shall be deemed to be in possession of a valid certificate of registration from the date so applied for the purpose of exercising all rights and performing all duties or bearing all liabilities under the Act or the Rules made there under. Thus once the petitioner made application for amendment of certificate under Section 20 of the Act furnishing the information required under Section 23 of the Act, it could not be treated as a dealer evading registration.

Another fact also required to be noticed here is that M/S V. MART RETAIL LTD., Kishanganj, is an additional place of business, i.e., a Branch of the dealer having its principal office at Ara registered under the Act. The word dealer talks about a person, it may be natural or juristic. If the said branch would have been run by a Commission Agent, Broker, Factor, Mercantile Agent then situation would have been different and they may be treated as a dealer for the purpose of Section 28(1) of the Act but here the retail store at Kishanganj is a branch of the dealer so it

was not required to be registered separately under the Act, rather the dealer was required to furnish information under Section 23 for the purpose of amendment of the certificate of registration as envisaged under Section 20 of the Act. Therefore, Section 28(1) is not applicable in the case of the petitioner.

In our considered opinion, the order impugned dated 23.01.2015, passed by the Assistant Commissioner of Commercial Taxes, Kishanganj Circle, Kishanganj (respondent no. 2) is without jurisdiction as well as based on wrong notion of law.

We may at this stage refer to the decision rendered in the case of A.V. Venkateshwaran- Vs- R.S. Wadhvani(AIR 1961 SC 1506), wherein the Constitution Bench of the Supreme Court expounded the legal position with regard to Article 226 vis-à-vis existence of alternative remedy. The Supreme Court in the said judgment, held that existence of an alternative remedy by itself does not operate as bar to maintain a petition under Article 226 in two exceptional situations, namely, (1) where there is complete lack of jurisdiction in the officer or authority to take the action impugned, and (2) where the impugned order has been passed in violation of the principles of natural justice. The present case comes within the first category, which requires invoking the jurisdiction under Article 226 of the Constitution of India,

bye-passing the statutory alternative remedy.

In view of the foregoing discussion, the order impugned dated 23.01.2015 passed by the Assistant Commissioner of Commercial Taxes, Kishanganj Circle is set aside and the application is allowed.

(Sudhir Singh, J)

I agree.

(Ramesh Kumar Datta,J):-

(Ramesh Kumar Datta, J)

A.F.R./U.K./-

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