IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7230 of 2015

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Kalyanpur Cements Limited, a Public Limited Company, incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 2 & 3, Dr. Rajendra Prasad Sarani, Kolkata-700001 and its Head Office at Maurya Centre, 1, Fraser Road, Patna-800001- through its Chief Financial Officer Mr. Purushottam Kumar Chaubey. null null

.... Petitioner/s

Versus

1. The State of Bihar- through its Chief Secretary, Old Secretariat, Off Bailey Road, Patna-800001.
2. Department of Commercial Taxes, Government of Bihar- through its Principal Secretary, New Secretariat, Vikas Bhawan, Bailey Road, Patna-800001.
3. Commissioner, Commercial Taxes, Government of Bihar, New Secretariat, Vikas Bhawan, Bailey Road, Patna-800001.
4. Assistant Commissioner, Commercial Taxes, Special Circle, Office of the Commercial Taxes, Anta Ghat, Patna- 800001.
5. Accountant General (Audit), Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan Prasad
Mr. Sudhanshu Trivedi

For the Respondent/s : Mr. Vikash Kumar, A.C. 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)

7 23-11-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner prays for quashing the order dated 23.06.2014 passed by the Assistant Commissioner, Commercial Taxes, Special Circle, Patna under Section 33 of the Bihar Value Added Tax Act, 2005.

It is submitted by learned counsel for the petitioner that a notice to show cause was issued under Section 33 of the Act on the basis of certain audit objections made by the Comptroller and Auditor General for the period 2011-12 regarding the claim of Input Tax Credit made by the petitioner.

A show cause for hearing under Section 33 of the Act dated 16.4.2014 was issued by the Deputy Commissioner of Commercial Taxes Special Circle, Patna to the petitioner attaching the copy of the observations made by the Comptroller and Auditor General and granting an opportunity to show cause as to why it should not be reassessed having failed to assess the tax liability correctly. A detailed reply to the show cause was filed by the petitioner on 21.6.2014. The petitioner supplemented the said submissions made in the show cause reply by a further letter dated 22.8.2014 addressed to the Deputy Commissioner, Commercial Taxes, Special Circle, Patna stating that the matter was heard by the adjudicating authority a day before and on the basis of the said discussions details of certain items of various inputs were being submitted.

It is the stand of the petitioner that after seven months, the impugned order dated 23.6.2014 was passed by back-dating the same. It is submitted that till 22.8.2014 the petitioner was not aware of the order dated 23.6.2014 and on 14.1.2015 the petitioner received a demand notice dated 23.6.2014 only when the representative of the petitioner came to the office of the Deputy Commissioner of Commercial Taxes, Special Circle, Patna, by which the petitioner was directed to pay Rs.12,86,076, including a penalty of Rs. 4,17,107/-.

In the counter affidavit filed on behalf of the respondents, apart from reiterating that the demand notice was issued on 23.6.2014, nothing has been brought on the record to show that the order dated 23.6.2014 was earlier dispatched in the manner as required by law.

Apart from the same, learned counsel for the petitioner submits that the detailed reply of the petitioner has been simply brushed aside without discussing any aspect of the matter by the Assessing Officer. Hence, the order is non est and in violation of the principles of natural justice. The show cause appears to have been a formality, if there was no intention to consider the reply filed by the petitioner.

Learned counsel for the State is unable to show any discussion on any point raised by the petitioner in its show cause to the reply in the impugned order dated 23.6.2014. Apart from the above, nothing has been brought on the record to show that the order was communicated to the petitioner prior to 14.01.2015 and it is not a back-dated order.

The writ application is, accordingly, allowed. The impugned order dated 23.6.2014 is quashed and the matter is remanded to the respondent No.4 to proceed afresh in the matter and decide the same in accordance with law. It is made clear that no fresh notice is required to be issued to the petitioner. The petitioner shall remain present before the respondent No.4 on 14th December, 2015 at 11 A.M., whereafter the respondent No.4 shall proceed to finally decide the matter in accordance with law within a period of two months thereafter.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

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