IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4130 of 2015

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Apollo Tyres Ltd., a Company incorparated under the Companies Act having its registered office at 7, Industrial Area , Sector 32, Gurgaon - 122001 (Haryana) and branch office at Rukunpura , Bailey Road (near canal), P.O. B.V. College , P.S. Rukunpura , District - Patna through its authorized signatory, Srutiranjan Sahoo, son of Late Purna Chandra Sahu, resident of A-42 , Anjali Apartment (behind Alankar Place), P.O. Boring Road, P.S. S.K. Puri , District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar , Patna having its office at Vikas Bhawan , Bailey Raod, Patna.
2. Commercial Taxes Officer, Patliputra Circle , Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy with M/S Manju Jha, P.K. Mishra & Abhi Sarkar, Advocates

For the Respondent/s : Mr. Purnendu Singh, GP 27

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 26-03-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 27.12.2014 passed by the Commercial Taxes Officer, Patliputra Circle, Patna.

It is submitted by learned counsel for the petitioner that the Forms ‘C’ and Forms ‘F’ that were available with the petitioner were produced before the Assessing authority in proceedings under Section 9(2) of the Central Sales Tax Act read with Section 25 of the Bihar Value Added Tax and a prayer was made for extension of time to furnish the remaining declaration forms but instead of granting the prayer the impugned assessment order has been passed raising a total demand of Rs. 31,38,764.22, which is wholly unjustified.

It is the stand of the petitioner that the petitioner was helpless to produce the said forms as the authorities having jurisdiction over the case of the petitioner and its branches situate out of the State of Bihar had not issued the requisite Forms ‘C’ and ‘F’.

It is thus submitted by learned counsel for the petitioner that the petitioner being helpless to produce the Forms ‘C’ and ‘F’ on account of inaction of the Sales Tax Authorities of another State, then the respondent authorities ought to have granted further time in the matter or allowed the petitioner to produce the documents to show the nature of the transactions which clearly fall within the provisions of the Central Sales Tax Act.

In support of the aforesaid stand, learned counsel for the petitioner relies upon a decision of the Supreme Court in the case of Ambica Steels Ltd. vs. State of U.P. & Ors. : (2009) 14 SCC 309.

Learned counsel further submits that at present the petitioner is in possession of almost all the forms for the entire transactions and the remaining Forms ‘C’ and ‘F’ would also become available within a period of two weeks from today which he is ready and willing to produce before the respondent authority if an opportunity is given to him.

Learned counsel for the State has sought to assail the aforesaid submissions of learned counsel for the petitioner by stating that from the counter affidavit filed it is evident that the petitioner has not even co-operated with the respondent authorities in the matter and has failed to produce the requisite forms and thus the order has been passed in the matter.

On a consideration of the facts and circumstances of the case, this Court is of the view that considering the failure to produce the Forms ‘C’ and ‘F’ on account of the inaction of the authorities of other States and further considering the fact that the matter was not time barred, the respondent assessing authority ought to have granted time to the petitioner to produce the necessary forms or in the alternative examine the relevant documents of the petitioner to come to the conclusion as to whether the transactions were in the nature of inter-State transactions covered by the Central Sales Tax Act or not before passing the impugned order.

Thus, we are of the view that the order dated 27.12.2014 ought to be set aside and the petitioner be given an opportunity to satisfy the respondent authorities by producing the necessary forms in the matter.

The writ application is, accordingly, allowed. The order dated 27.12.2014 is quashed. The matter is remanded before the Assessing Authority to consider and dispose of the matter afresh in accordance with law after considering the Forms and documents that may be produced by the petitioner before him.

The petitioner shall appear before respondent No.2 on 27th April, 2015 at 11.30 A.M. along with the necessary forms and evidences upon which the Assessing Authority shall decide the matter afresh in accordance with law.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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