IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2462 of 2015

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Magadh Micro Tower and Transmission Private Limited , R/o - Dadiji Sweet Lane, Veena Niwas, Ist Floor, Boring Road, P.S-Sri Krishna Puri Patna. through its director, Arvind Gadvia, S/o- Late Devnandan Prasad Singh R/o - Dadiji Sweet Lane, Veena Niwas, Ist Floor, Boring Road, P.S-Sri Krishna Puri,Patna.

.... Petitioner

Versus

1. The State of Bihar through Commissioner-cum-Secretary, Vikash Bhawan , Patna.
2. The Deputy Commissioner of Commercial Tax, Patna Central Circle , Near Gandhi Maidan , Patna

.... Respondents

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with

Civil Writ Jurisdiction Case No.2509 of 2015

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Magadh Micro Tower and Transmission Private Limited , R/o - Dadiji Sweet Lane, Veena Niwas, Ist Floor, Boring Road, P.S-Sri Krishna Puri Patna. through its director, Arvind Gadvia, S/o-Late Devenandan Prasad Singh , R/o - Dadiji Sweet Lane, Veena Niwas, Ist Floor, Boring Road, P.S-Sri Krishna Puri Patna.

.... Petitioner

Versus

1. The State of Bihar through Commissioner-cum-Secretary, Vikash Bhawan , Patna.
2. The Deputy Commissioner of Commercial Tax, Patna Central Circle , Near Gandhi Maidan , Patna

.... Respondents

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with

Civil Writ Jurisdiction Case No.2673 of 2015

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Magadh Micro Tower and Transmission Pvt. Ltd.,R/o - Dadiji Sweet Lane, Veena Niwas, Ist Floor, Boring Road, P.S.-Sri Krishna Puri, Patna. through its director, Arvind Gadvia S/o Late Devnandan Prasad Singh R/o - Dadiji Sweet Lane, Veena Niwas, Ist Floor, Boring Road, P.S.-Sri Krishna Puri, Patna. through its director

.... Petitioner

Versus

1. The State of Bihar through Commissioner-cum-Secretary, Vikash Bhawan , Patna.
2. The Deputy Commissioner of Commercial Tax, Patna Central Circle , Near Gandhi Maidan , Patna

.... Respondents

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with

Civil Writ Jurisdiction Case No.2757 of 2015

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Magadh Micro Tower and Transmission Pvt. Ltd.,R/o - Dadiji Sweet Lane, Veena Niwas, Ist Floor, Boring Road, P.S.-Sri Krishna Puri, Patna. through its director, Arvind Gadvia S/o- Late Devnandan Prasad Singh R/o - Dadiji Sweet Lane, Veena Niwas, Ist Floor, Boring Road, P.S.-Sri Krishna Puri, Patna.

.... Petitioner

Versus

1. The State of Bihar through Commissioner-cum-Secretary, Vikash Bhawan , Patna.
2. The Deputy Commissioner of Commercial Tax, Patna Central Circle , Near Gandhi Maidan , Patna

.... Respondents

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Appearance :
(In all the cases)
For the Petitioner/s : Mr. Y.V.Giri, Sr.Advocate with
Mr. Krishna Mohan Mishra, Advocate
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 SUDHIR SINGH
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

7 24-11-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the orders dated 30.7.2014 and the consequential demand notices with respect to the Assessment Years 2008-09, 2009-10, 2010-11and 2011-12.

Proceedings under Section 8 of the Bihar Tax on Entry of Goods Act, 1993 read with Section 33 of the Bihar VAT Act, 2005 were initiated by order dated 22.5.2014 on the basis of an

Audit objection made by the Accountant General, Bihar. Notices were issued to the petitioner at its registered office at Patna and were stated to have been received by a staff of the petitioner. The petitioner, however, did not take any action pursuant to the said notice and ultimately by the impugned order dated 30.7.2014 tax liability at the rate of 8% under the Entry Tax Act along with interest thereon was levied by the impugned order which also imposed penalty under Section 28 of the Bihar VAT Act equivalent to the amount of Entry Tax payable.

At the outset, learned counsel for the petitioner has sought to raise the issue regarding non-compliance of the principles of natural justice stating that the service of notice was not made upon the declared Manager of the petitioner, who, according to the petitioner, is one Mr. Arvind Gadvia, who has been authorized by the petitioner company to receive notice and carry out work with the respondent.

In this regard the stand of learned counsel for the State is that the petitioner has not filed any declaration in the prescribed form and in the prescribed manner as required under Section 22 of the Act and thus it is not open to the petitioner to take such a stand. The said fact has not been controverted by the petitioner in the rejoinder to the counter affidavit. This Court is unable to accept such statement made by learned counsel for the petitioner on that count.

It is further submitted by learned counsel for the petitioner that proceeding was initiated only under Section 33 of the Bihar VAT Act and no proceeding was initiated under Section 28 thereof and thus it is not open to the Assessing Officer to have passed any order of penalty under Section 28 of the Act.

It is also submitted by learned counsel that under the first proviso to Section 28(1) of the Bihar VAT Act any such proceeding under Section 28 can be initiated only before expiry of two years from the expiry of the period to which it relates whereas the present matters relate to the periods 2008-09, 2009-10, 2010-11 and 2011-12 and thus even for the last of the said periods in question the proceeding could not have been initiated after 31st March, 2014, whereas even the proceeding under Section 33, on which the impugned order has been passed, has been initiated on 22.5.2014 which is beyond the statutory period prescribed for initiating proceedings under Section 28 and thus the order of penalty under Section 28 is without jurisdiction on the said count also.

It is also submitted by learned counsel for the petitioner that the petitioner is a supplier of the said goods to the Bihar

Electricity Board under purchase order for supply of materials/equipments for construction of 132 KV bay at Grid Sub Station Dalsingsarai and 132 KV S/C Dalsingsarai-Bachhwara transmission line (2 phase strung) on D/C Tower for feeding 132 KV power to TSS Bachhwara under railway deposit scheme on Turn Key basis for which the purchase orders of different years were issued from time to time and under the said contract it was clearly stipulated that the cost thereunder is exclusive of Entry Tax which will be paid extra by BSEB as applicable and as a matter of fact the said Entry Tax has been paid by the BSEB which has been accepted by the respondents and thus there was no occasion for the Assessing Officer to initiate proceedings under Section 33 of the Act with respect to the same goods for payment of entry tax.

Learned counsel for the State submits that it is not open to the petitioner to ignore the notices issued by the Assessing Authority and straightaway approach this Court for quashing the orders of the authority, who has been compelled to take such steps because no step was taken by the petitioner with respect to the notices issued.

There appears to be some force in the above submission of learned counsel for the State but from the admitted facts it is evident that there could not have been any proceeding at all initiated under Section 28 of the Act on the date of notice and as a matter of fact no proceeding was initiated under the said Section by the Assessing Officer who had only initiated proceeding under Section 33 of the Act. Without initiating proceedings under Section 28 it was not open to the Assessing Officer to have imposed penalty irrespective of the fact that the petitioner had appeared or not pursuant to the notice under Section 33 of the Act.

It also appears that proceedings under Section 28 have to be initiated within two years from the expiry of the period for which it relates, whereas the last assessment period in the present matter is 2011-12 and thus the proceeding even if the Assessing Officer so wished could not have been initiated on 22.5.2014 when the notices were issued for the proceedings under Section 33.

In the above circumstances, the impugned orders in so far as they relate to penalty under Section 28 of the Act are wholly unsustainable and beyond jurisdiction of the Assessing Authority.

So far as remaining part of the orders is concerned, in the facts and circumstances of the case, we set aside the impugned orders dated 30.7.2014 and the consequential demand notices and remand the proceedings in so far as it relates to Section 33 of the Act to the Assessing Officer to proceed afresh in accordance with law after giving an opportunity of hearing to the petitioner. No further notices shall be required to be issued to the petitioner, who shall appear before the Assessing Authority on 14th December, 2015 at 11 A.M. along with all the relevant documents and materials and the Assessing Authority shall thereupon proceed to dispose of the matter within a further period of two months thereafter in accordance with law.

All the writ applications are, accordingly, allowed with the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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