IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7182 of 2015

==

M/s Rahul Marble & Tiles, a proprietary concern having its place of business at Kumar Badri Narain Market, near Ramesh Chowk, At P.O. P.S. Aurangabad, District Aurangabad through its Proprietor Devi Dayal Singh, S/o Late Achheber Singh Resident of at P.O., P.S. Aurangabad, District Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner of Commercial Taxes, Vikash Bhawan, Bailey Road, Patna.
2. The Deputy Commissioner of Commercial Taxes, Aurangabad Circle, Aurangabad.

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. S.D.Sanjay, Sr. Advocate
Mr. Akshan Amritanshu, Advocate

For the Respondent/s : Mr. Vikash Kumar, AC to PAAG

==

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

6 05-11-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 24.12.2014 passed by the Deputy Commissioner, Commercial Taxes, Aurangabad Circle by which the petitioner has been assessed tax liability of Rs. 61,29,396 and three times penalty of Rs. 1,83,88,188/- as also interest of Rs. 7,35,528/-, totaling to Rs. 2,52,53,112/- under Section 31(2)(a) of the Bihar VAT Act. Although the reopening notice was issued under Section 31(1) also but learned counsel for the petitioner clarifies that the present writ petition is concerned only with the assessment made and penalty imposed under Section 31(2) of the Act and the writ application has also been filed with respect to that part of the order only.

The petitioner is a dealer registered under the VAT Act, 2005 as also Central Sales Tax Act, 1956 and under the Entry Tax Act and had admittedly filed all his returns showing the GTO to the tune of Rs. 36,77,883/- and further had purchased from outside the State, i.e., State of Rajasthan, goods for an amount of Rs. 40,35,285/- and had also paid Bihar VAT as output tax of Rs. 4,96,514/-. A notice under Section 31 of the Bihar VAT Act dated 5.12.2014 was issued to the petitioner making allegation that the petitioner had purchased goods to the extent of Rs. 3,47,47,051/- from various consigners of Gujarat. The said allegation was based upon certain facts and figures obtained by the Commercial Tax Headquarters which had been forwarded to the Assessing Officer under which as many as 12 dealers of Gujarat were shown to have raised invoices of the aforesaid amount against the petitioner by mentioning Tin No. against Form-C. Upon receipt of the said notice the petitioner issued legal notices dated 18.12.2014 to all the 12 such dealers to disclose the Road permit, way bill, Suvidha and Form-C utilized for the purpose of sale and transportation of goods, any purchase order or transfer of payment so that the petitioner may file reply to the Commercial Tax authorities against the notice issued to it. Having received no such reply, the petitioner filed his reply clearly stating that the allegations made in the notice is false as the petitioner during the period 2013-14 had purchased tiles only from one Teja Marble Industries and Teja Ceramics of Kishangarh, Rajasthan and did not make any purchase much less purchased goods for a sum of Rs. 3,47,47,051/- from the traders of the State of Gujarat and the Suvidha Form, the D-IX Form for import from the State of Rajasthan and Form-C issued under the Central Sales Tax Act having been issued by the respondent-authorities can very well be verified by the State-authorities themselves.

During the course of hearing the petitioner reiterated the statements and also produced the statements regarding Suvidha and Form-C utilized during the said financial year and at the instance of the respondents also produced all invoices, Form-C, transport receipts, statement regarding purchase of goods from Teja Marble and the Bank statement. However, despite the petitioner having produced all the materials available with it, the respondents taking the figures obtained from the Sales Tax Department, Government of Gujarat as the last word without making any further inquiries in the matter passed the impugned order dated 24.12.2014 imposing the aforesaid tax, penalty and interest which was followed by demand notice dated 28.12.2014.

Learned counsel for the petitioner submits that it was not open to the respondents to have relied solely upon the figures obtained from the Government of Gujarat and treated the said figures, as it was evidently that of the traders and dealers of that State, as sacrosanct and rejected the reply to show cause filed by the petitioner on the said ground alone. It is submitted that the petitioner, having not taken any supplies from the traders of the State of Gujarat, could only submit that fact and it was not at all possible for the petitioner to prove the negative. It is submitted that it is a primary rule of evidence that any party which asserts a fact must prove such assertion on the basis of evidence and materials but since the assertion had been made by the Department only on the basis of certain figures obtained from the Sales Tax Department, Government of Gujarat it was for the respondents, after having considered the reply of the petitioner, to have obtained the necessary materials and documents in order to justify their stand against the petitioner and impose any tax and penalty under Section 31(2) of the Act.

Learned counsel for the State, on the other hand, submits that the petitioner has alternative remedy before the statutory authorities in the matter and this writ application should be dismissed on the said ground alone.

It is further submitted that the figures having been obtained by the Commercial Tax Headquarters from the State of Gujarat and having been put before the petitioner, it is the petitioner who ought to have authenticated the same and on his failure to do so, the Assessing Officer has passed the impugned order.

This Court finds sufficient force in the submission of learned counsel for the petitioner. In the reply to the show cause under Section 31(2) the petitioner had made a clear statement that it had not obtained any supplies from the traders of Gujarat and also produced all the relevant documents including the Bank Accounts in support of the said fact; it cannot be expected of it to prove the negative if it had not obtained the supply. If the respondent-Department had claimed that the petitioner had obtained supply from the State of Gujarat even on the basis of figures obtained from the authorities of the State of

Gujarat then it was for them to ensure the obtaining of the relevant materials in this regard from the authorities of the State of Gujarat and the traders named therein and put the same before the petitioner to answer any adverse material found against the petitioner. It cannot be assumed that the traders and dealers of the State of Gujarat alone will give correct and reliable statements and file proper returns and documents before the authorities of that State and the contrary would apply to all the traders and dealers of the State of Bihar. Such matters can only be decided on the basis of relevant documents and materials such as Suvidha Forms, Form-C, the mode of actual transportation of goods and mode of payment for the goods and such other relevant document. Without the same it was not open to the Assessing Officer to have come to the conclusion and impose the tax and penalty under Section 31(2) of the Act.

In the above circumstances, it would be futile to compel the petitioner to avail of the alternative statutory remedy, as the present is clearly a case of findings based on no material and a perverse exercise of jurisdiction by the assessing officer.

The writ application is, accordingly, allowed. The impugned order dated 24.12.2014 and the demand notice dated 28.12.2014 pursuant to the same are both quashed.

The respondents, however, shall have the liberty to proceed afresh in the matter in accordance with law.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

U			