IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11177 of 2015

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Balajee Coal Depot, a proprietary concern, having its office at Fatehpur, P.O. and P.S.- Gaya, Distt.- Gaya through its Proprietor Binod Kumar Roy son of Shri Vakil Roy, resident of Transport Nagar Kuju, P.S. Mandu, P.O. Ramgarh, Distt.- Ramgarh, Jharkhand

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Vikash Bhavan, Bailey Road, Patna
2. Commercial Taxes Officer, Gaya Circle, Gaya

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.11184 of 2015

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Balajee Coal Depot, a proprietary concern, having its office at Fatehpur, P.O. and P.S.- Gaya through its Proprietor Binod Kumar Roy son of Shri Vakil Roy, resident of Transport Nagar Kuju, P.S. Mandu, P.O. Ramgarh, Distt.- Ramgarh, Jharkhand

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Vikash Bhawan, Bailey Road, Patna
2. Commercial Taxes Officer, Gaya Circle, Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy

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)

2 08-09-2015 I.A.No. 7275/2015 in CWJC No. 11177/2015

&

I.A. No. 7276/2015 in CWJC No. 11184/2015

The interlocutory applications have been filed for correcting the name of the petitioner as “Balaji Coal Depot” as has been mentioned in the impugned assessment order dated 30.12.2014, whereas inadvertently the name of the petitioner has been mentioned as “Balaji Commercial Depot” in the description of the petitioner in the writ applications.

On a consideration of the facts and circumstances of the case, the prayers for amendment are allowed and it is directed that the name of the petitioner shall be correctly read as “Balaji Coal Depot” instead of “Balaji Commercial Depot” in both the writ applications.

I.A. Nos. 7275 and 7276 of 2015 are, accordingly, disposed of.

Heard learned counsel for the petitioner and learned counsel for the State in both the writ applications.

In these two writ applications common issues are involved and identical orders dated 30.12.2014 for the periods 2012-13 under Section 31 of the VAT Act and 2013-14 under Section 32 of the VAT Act are under challenge. Hence, they are taken up together and are being disposed of by this common order.

The petitioner had replied to the notices claiming cancellation of online e-Suvidha forms to the extent of Rs.

80,13,785 and Rs. 95,53,860.21 for the two periods respectively. The ground essentially on which the explanation of the petitioner was rejected was that the petitioner did not produce any evidence for cancellation of the e-Suvidha forms.

Although a counter affidavit has been filed on behalf of the Respondent Nos. 1 and 2 in CWJC No. 11184/2015, learned counsel for the State submits that the issues being the same, the said counter affidavit should also be treated as one in the other writ petition.

In para-13 of the counter affidavit it is sated that after analysis of details available on departmental website regarding Suvidha issued online to the dealer, it is found that the dealer has cancelled a huge number of Suvidha forms worth Rs. 95,53,860.21 and that there is possibility that the dealer has cancelled the Suvidha forms after receiving the goods in its Depot.

It is, thus, evident that the stand taken in the impugned orders is nullified by the said statement made in para-13 of the counter affidavit as the factum of cancellation of e-Suvidha forms is not in dispute and the e-Suvidha forms being issued from the departmental website it was always open to the petitioner to cancel it and as a matter of fact, it is submitted that e-Suvidha forms have been cancelled and the only issue remains is as to whether despite the cancellation there has been any misuse by the petitioner. The same cannot be matter of mere conjecture and since in the present matter the petitioner has produced books of accounts before us which we have refrained from looking into, we are of the view that the petitioner has only to produce books of accounts before the Assessing Officer. In the facts and circumstances of the present case and in view of the aforesaid admission, the petitioner should be given an opportunity of doing so in order to satisfy the Assessing Officer regarding genuineness of the cancellation.

For the aforesaid reasons, both the writ applications are allowed and the impugned orders both dated 30.12.2013 are quashed and the matters are remanded to the respondent no.2, the Commercial Tax Officer, Gaya Circle, Gaya to decide the same afresh after giving opportunity to the petitioner to produce its books of accounts and other relevant documents in support of the stand regarding the genuineness of the cancellation.

It is made clear that no further notice is required to be issued to the petitioner and the petitioner shall remain present before the Assessing Officer on 2nd November, 2015 at 11.00 A.M. and thereafter if the petitioner requires some more time to produce some evidence from third party, if so required by the Assessing Officer, then reasonable time may be granted to the petitioner for the said purpose.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

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