IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12876 of 2010

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Ram Gopal Agrawal S/O Late Surajmal Agrawal, Proprietor of M/S Kamla Industries Sultanganj, Sultanganj, P.S.- Sultanganj, Distt.- Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Commercial Taxes Bihar, Patna, New Secretariat, Patna
3. The Joint Commissioner, Bhagalpur Circle, Department of Commercial Taxes, Court Compound, Bhagalpur
4. The Deputy Commissioner, Bhagalpur Circle, Department of Commercial Taxes, Court Compound, Bhagalpur

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. T.N. Maitin, Sr. Adv.
Mr. Rajeev Kumar Sinha
For the Respondent/s : Mr. Harishankar Roy, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 08-04-2015

Heard the parties.

2. The petitioner, proprietor of M/S Kamla Industries, Sultanganj in the district of Bhagalpur, has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 29.07.2010 (Annexure-6) passed by the respondent Commissioner, Commercial Taxes (Respondent No.2) directing the officials of Bhagalpur circle of Commercial Taxes Department, for lodging an F.I.R. against the petitioner with respect to the incident alleged to have taken place in the year 1993.

3. It is not in dispute that a penalty of Rs. 8,320.50 was imposed upon the driver of the vehicle of M/S Kamla Industries, Sultanganj under Section 31(3) of the Bihar Finance Act, 1981 (In short 'Act, 1981') by order dated 07.09.1993 passed by the Commercial Tax Officer, Bhagalpur on the allegation that there was interpolation made in the road permit dated 05.09.1993 and licence dated 05.03.1950. The aforesaid order dated 07.09.1993 has been

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brought on record as Annexure-1 to the writ petition. Being aggrieved by the aforesaid order dated 07.09.1993, Appeal No. 28 of 1993-94 was preferred in terms of Section 45(1) of the Act, 1981, which was finally allowed by the order as contained in Annexure-2 passed by the respondent Joint Commissioner (Appeal) of Commercial Taxes, Bhagalpur Circle, Bhagalpur. It is also not in dispute that the petitioner approached the Commissioner of Commercial Taxes, Bihar, under Section 52(1) of the Act, 1981 for compounding the offence alleged to have committed by the petitioner-firm or his driver. Finally by order dated 05.09.1997 (Annexure-3) the prayer of the petitioner for compounding the offence was allowed in terms of Section 52(1) of the Act, 1981 on payment of Rs.4000/- by the petitioner.

4. Learned senior counsel appearing on behalf of the petitioner submits that in the light of the aforesaid order dated 05.09.1997 (Annexure-3) the petitioner deposited Rs. 4, 000/- on 08.09.1997, which was accepted and, thereafter, the respondent Commissioner of Commercial Taxes vide order dated 19.09.1997 (Annexure-4) issued directions for withdrawal of the criminal prosecution already initiated against him during the interregnum period. It is contended that in the light of the aforesaid order, the Commercial Tax Officer, Bhagalpur Circle, Bhagalpur, wrote a letter on 03.12.1997 (Annexure-5) to the Officer-in-charge, Kotwali, Bhagalpur, for withdrawal of the F.I.R. lodged against M/S Kamla Industries, Sultanganj. It is further submitted that in the above undisputed factual matrix, the respondent Commissioner of Commercial Taxes was not justified in passing the impugned order dated 29.07.2010 (Annexure-6) directing for lodging a fresh FIR against the petitioner. According to him, for the offences alleged to have committed by the petitioner or his driver the maximum sentence prescribed under Section 49(2) (f) of the Act, 1981 is one year and with a fine not exceeding to 1500/- rupees. Therefore, it is pleaded

that the impugned order is an abuse of the process of the Court and if it is allowed to stand, the same will result in miscarriage of justice. It is also contended that even if a fresh F.I.R. is allowed to be lodged, the whole prosecution against the petitioner or his driver would be barred by limitation under Section 468(2) Cr. P.C. On these grounds, besides others, it is contended that the impugned order is liable to be set aside and quashed by this Court.

5. Learned A.C. to PAAG appearing on behalf of the respondents has opposed the prayer by referring to the averments made in the counter-affidavit filed on behalf of the respondent no.2. According to him, the impugned order was passed by the respondent Commissioner of Commercial Taxes in exercise of his revisional powers under Section 46(4) of the Finance Act, 1981. It is contended that for exercising his power under Section 46(4) of the Act, 1981, the Commissioner was authorised to initiate a proceeding suo motu by examining the records of any proceeding recorded by any authority, officer or person subordinate to him under this Act. Therefore, according to him, the order impugned cannot be legally faulted.

6. After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that the impugned order dated 29.07.2010 (Annexure-6) passed by the respondent no.2 cannot be sustained in law. Indisputably, the offences alleged to have committed by the petitioner or his driver were compounded in terms of Section 52(1) of the Act, 1981. Thereafter, admittedly the petitioner deposited the amount so fixed by the respondent Commissioner and the F.I.R. lodged earlier was directed to be withdrawn and in the light of the aforesaid order, the communication was made by the Commercial Tax Officer, Bhagalpur on 03.12.1997 (Annexure-5) requesting the Officer-in-Charge of Kotwali P.S. Bhagalpur to drop the criminal proceeding. Once the order was passed by the respondent Commissioner of Commercial

Taxes in terms of Section 52 of the Act, 1981, then there was no occasion for his successor in office to exercise his powers under Section 46(4) of the Act, 1981. Furthermore, while exercising his suo motu powers under Section 46(4) of the Act, 1981, the Commissioner could have examined the correctness or otherwise of the order(s) passed by his subordinates, but he was/is not authorised to review the order passed by his predecessor-in-office. Learned State counsel has not been able to show that the respondent Commissioner was vested with the power of review by Act, 1981. This Court further finds that even if the F.I.R. is allowed to be lodged with respect to the aforesaid incident of 1993, then the whole criminal prosecution against the petitioner or his driver would be barred by limitation in terms of Section 468(2) Cr. P.C. If the impugned order is allowed to stand, this will result in miscarriage of justice.

7. For the reasons recorded above, the impugned order dated 29.07.2010 (Annexure-6) passed by the respondent no.2 is hereby set aside and quashed.

8. The writ petition stands allowed. However, in the facts and circumstances of the case, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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