IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14333 of 2014

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Tata International Limited, a Company incorporated under the Companies Act having its office at P.H. Chowk, Maripur, P.O. Muzaffarpur, P.S. Kazi Mohammadpur, District - Muzaffarpur through its Authorized Signatory Chetan Anand son of Late G. P. Verma resident of Imlichatti, Overbridge, P.S. Brahampur, P.S. Muzaffarpur, District - Muzaffarpur

.... Petitioner

Versus

1. State of Bihar through Commissioner of Commercial Taxes, Bihar Patna having its office at Vikas Bhawan, Patna
2. Assistant Commissioner of Commercial Taxes, West Circle, Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy
Mrs. Manju Jha
Mr. Abhi Sarkar

For the Respondent/s : Mr.Vikas Kumar, A.C. to P.A.A.G.)

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 13-03-2015

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the orders dated 20.12.2013 and 12.4.2014 for the period from 1.7.2013 to 31.12.2013, for which the application for issuance of Form-C filed electronically by the petitioner has been rejected and for the consequential direction to respondent No.2 to issue Form-C as also Form-F.

The petitioner is a dealer registered under the Bihar Value Added Tax Act, 2005 for the purpose of conduct of its business for purchasing raw skin from the dealers both registered and unregistered and after treating the same, the goods are transferred to its works at Dewas in the State of Madhya Pradesh. The said goods in terms of the provisions of Article 286 of the Constitution and Section 14 of the Central Sales Tax Act have been declared as goods of special importance in inter-State trade and commerce. The petitioner has been filing its returns for the said purchase made for different periods as per the requirement of law.

It is the stand of the petitioner that for the entire purchase made by the petitioner, the tax leviable in terms of the provisions of the Central Sales Tax Act had been paid either by the registered dealer from whom the purchases have been made or by the petitioner itself where purchases have been made from unregistered dealers.

However, in the returns being filed during the past years, it is admitted that for the period from 2006-07 to 2012-13 certain mistakes had cropped up in the returns in so far as filling up of the different columns was concerned which, however, did not lead to any evasion of tax or any payment of less tax by the petitioner. Under the provisions of Section 25 of the Bihar Value Added Tax Act, 2005, the returns were to be scrutinized by the tax authorities in the manner prescribed and within a time limit as prescribed therein but upon such scrutiny made by the Sales Tax Authorities also nothing untoward was reported nor any demand for any extra amount of tax was made at any point of time against the petitioner under Section 25 (2) of the Act.

However, according to the petitioner, for the reasons best known to the authorities of the Commercial Taxes Department, the application of the petitioner electronically made for supply of Form-C has been rejected.

It is submitted by learned counsel for the petitioner that in terms of the provisions of Section 8 (4) of the Central Sales Tax Act, the authorities of the Sales Tax department are obliged to issue the Form-C and Form-F, which are required by the petitioner for the purpose of carrying on its business so that the proper amount of tax may be paid in view of the nature of the transaction and the nature of goods involved.

Learned counsel for the petitioner further submits that the petitioner has filed all due returns and paid the tax in accordance with the returns filed and if at all there has been any mistake in the filing of the returns, the same could only have been the subject matter of a proper assessment by the respondents which would again be subject to the right of the petitioner to show before the assessing authority that no further tax is leviable in view of the actual nature of the transaction irrespective of any error in the returns filed.

In support of the same, learned counsel for the petitioner relies upon a decision of the Division Bench of Mysore High Court at Bangalore in the case of Narsepalli Oil Mills vs. State of Mysore: (1973) 32 S.T.C. 559, in which it has been held as follows:-

> "The petitioner cannot ascribe any error in the order of the Commercial Tax Officer since his own return was accepted by the assessing authority and there was no dispute that the sales were not exigible to tax under the Central Sales Tax Act. If the assessee makes a mistake in submitting a return and submits to be assessed to tax before the assessing authority, he is not estopped or precluded by any law from preferring an appeal and showing to the appellate authority that the sales are, in fact, not exigible to tax. If such a contention is taken, the appellate authority is under a duty to examine the matter and determine the question whether or not the sales are exigible to tax. There is no question of invoking the doctrine of estoppel. In our opinion, the Deputy Commissioner of Commercial Taxes as also the Tribunal have failed to exercise the jurisdiction vested in them."

The stand of learned counsel for the State is that the petitioner has failed to pay the taxes in accordance with the returns filed which was discovered by the respondent authorities and thereafter the assessment orders have been passed for six years, i.e., from 2006-07 to 2012-13 and huge amount of tax is due and payable by the petitioner. It is submitted by learned counsel that after the amendment to the Central Sales Tax (Bihar) Rules, 1957, the amended Rule 9 confers power upon the Commissioner by notification to specify the manner in which, and the conditions and restrictions subject to which any of the declarations or certificates prescribed under the Central Sales Tax Act may be obtained.

It is submitted that pursuant to the same, the Commissioner has issued the notification dated 6.9.2012 with regard to issuance of Form-C and the notification dated 30.3.2013 with respect to the issuance of Form-F through electronic media. It is urged that under the said notifications, the concerned officer of the Department is required to click acknowledgment number which will show four questions as to whether the different conditions for issuance of Form-C have been complied with by the dealer or not. One of the conditions is that the dealer must have deposited at least 75% of the tax in the last four quarterly returns and 100% of the tax payable in the immediately previous quarter to the last four quarters and with respect to Form-F, 90% of the tax payable in the previous two quarterly returns and 100% tax paid with regard to the immediately preceding quarter to the last two quarters with respect to inter-State transfer.

It is urged by learned counsel for the State that the tax has to be calculated in terms of the returns filed and upon such calculation it has been found by the Department that the petitioner has not paid the entire amount of tax and a huge amount of tax is payable by the petitioner.

Learned counsel for the petitioner in reply to the same submits that the petitioner was only required to pay the tax as per the return submitted by him which was the law prior to the amendment of Rule 9 on 4.7.2012 and even after the said amendment as per the notifications dated 6.9.2012 and 3.3.2013, the same position shall prevail and the stand of the respondents does not appear to be fair and reasonable in the matter, as a dealer can only be expected to pay the tax in terms of the return filed and if such a return is not found to be correct then it is for the respondent authorities after making a scrutiny under Section 25 of the VAT Act to intimate the dealer about any higher amount of tax payable and which the dealer would be obliged to pay or submit the explanation in that regard but no such action has been taken by the respondents in the present matter. It is further submitted that the assessment having been made for the huge amount, cannot disentitle the petitioner to obtain Form-F, as the mode of recovery of tax have been provided in the Bihar Value Added Tax, 2005 itself and the issuance of Form-F could not be made an additional mode of recovery, as there is no such provision either in the Act or Rule in that regard.

In support of the same, learned counsel for the petitioner relies upon a decision of the Karnataka High Court in the case of Joja Chemicals Private Limited vs. Assistant Commissioner of Commercial Taxes: (2003) 133 S.T.C. 508, in paragraph No.2 of which it has been laid down as follows:-

"2. A statement of objections has been filed on behalf of the respondents in which it is pointed out that the petitioner has been assessed for payment of an amount of Rs.51,161 under the Entry Tax Act. An appeal filed by the petitioner against the order of assessment is said to have been dismissed by the appellate authority despite which the petitioner has not remitted the amount of tax due from it. It is urged that default on the part of the petitioner in making the payment of amount of tax validly assessed against it disentitles it from claiming the issue of "C" forms from the respondents. I, however, find no substance in the defence set up by the respondent. The provisions of Section 8, sub-section (4) of the Central Sales Tax Act, 1956 read with rule 12 (1) of the Rules framed under the said Act envisage a declaration in the prescribed form to be furnished by the registered dealer to whom the goods are sold containing the prescribed particulars in order that the seller may be entitled to the benefit of section 8 (1) of the said Act. Sub-section (4) (a) of Section 8, requires the prescribed declaration forms to be obtained from the prescribed authority. There is nothing in section 8, sub-sections (1) or (4) nor is there any provision contained in the Rules framed under the Act which may empower the prescribed authority to withhold the issue of the requisite "C" forms only on the ground that the dealer who applies for the same is in arrears of tax. In the absence of any such power it is difficult to see how the prescribed authority can decline to issue the forms only because there is some default on the part of the dealer in making the payment of tax determined against it. That is especially so when the provisions of the Karnataka Entry Tax Act under which the amount of tax has been determined against the petitioner, provides an effective machinery for recovery of any such amount payable by an assessee. The said machinery, inter alia, envisages recovery of the outstanding tax amount as arrears of land revenue as also by invoking the provisions of the Code of Criminal Procedure regulating recovery of amounts

> levied as fine. These provisions are no doubt efficacious and wherever a default is committed by an assessee, the authorities concerned can invoke the same for quick and summary recovery of the amount from him. That being so, it is not permissible for the prescribed authority to withhold the "C" forms only on account of the default committed by the assessee in the payment of the tax determined against it. Any such stance taken by the prescribed authority would amount to prescribing an additional mode for recovery of the tax amount not otherwise recognized by section 8 (4) of the Entry Tax Act. If the Legislature really intended to provide withholding of "C" forms to a dealer as one of the modes for coercing him to make the payment of tax amount held recoverable, nothing prevented it from prescribing that also as one of the permissible modes for recovery. Since however section 8 (4) of the Entry Tax Act does not sanction the method adopted by the prescribed authority as one of the modes of recovery for the amount of tax determined under the Act, it is impermissible for it to take resort to the same for compelling payment. In the circumstances, therefore, I see no justification behind the sand taken by the respondent for refusing to issue of "C" forms to the petitioner. The writ petition accordingly succeeds and is hereby allowed. The respondents shall issue the requisite forms to the petitioner in terms of its application dated May 13, 1997 within one week from today. There shall however be no orders as to costs."

We have considered the submissions of learned counsels for the parties. We find sufficient force in the submissions of learned counsel for the petitioner. The issuance of Form-C and Form-F is required under the provisions of the Central Sales Tax Act so that the dealer may be entitled to the benefit of the lower rate of tax with respect to sales made in the course of inter-State trade or commerce with regard to goods, which have been declared to be of special importance in the inter-State trade or commerce under the provisions of the Central Sales Tax Act. Under Section 8 (4) of the Central sales Tax Act as also Central Sales Tax (Bihar) Rules, the requirement was only to see that the dealer has filed all the returns and had paid the tax as admitted in the said returns filed. Even after the amendment in Rule 9 of the Central Sales Tax Rules which has conferred power upon the Commissioner of Commercial Taxes, there is nothing in the notifications dated 6.9.2012 and 30.3.2013 issued by the Commissioner which lays down anything to the contrary that any scrutiny is to be made apart from what is required under the provisions of the Bihar Value Added Tax Act, 2005 in the matter. There having been no demand made upon the petitioner after scrutiny as provided under Section 25 of the VAT Act, it is not open to the respondent authorities at the time of issuance of Form-C to discover something beyond what is required by the Bihar Value Added Tax Act and Rules and refuse to issue Form-C or Form-F applied for by the petitioner so long as the petitioner has filed the returns as required under the notification and has paid the tax as admitted in the returns.

This Court is not in agreement with the submission of learned counsel for the State that the tax payable would be what the authorities of the Commercial Taxes Department considered to be fit. They have not prior to the said date exercised their powers of scrutiny in the matter under Section 25 of the VAT Act and demanded any additional tax to be paid by the petitioner. So far as the assessments made after the date of the application and the recovery of tax thereon are concerned, the same stand on entirely different footings and they cannot be used for the purpose of denying of issuance of Form-C and Form-F, as efficacious mode of recovery of tax is available to the respondent authorities under the provisions of the Central Sales Tax Act read with Bihar Value Added Act and Rules.

Thus, in the light of the aforesaid discussions, the writ application is allowed and the orders dated 20.12.2013 and 12.3.2014 of the respondent authorities rejecting the application for issuance of Form-C are quashed and the respondents are directed to issue requisite Form-C or Form-F applied for by the petitioner in accordance with law.

V.P.Sinha/-

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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