IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8012 of 2015

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M/s Maruti Ingots Pvt. Ltd. a registered company having its Office at Industrial Area, Bela, District - Muzaffarpur through one of it's Director Gopal Prasad Tulsyan. Son of Sri Girdhari Lal Tulsyan. Resident of Sikandarpur, P.S.- Town, District - Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-Cum-Commissioner of Commercial Taxes, Bihar Patna having it's Office at Vikas Bhawan, Patna.
2. The Deputy Commissioner of Commercial Taxes (Incharge) Muzaffarpur [East] Commercial Taxes Circle, Muzaffarpur.
3. The Assistant Commissioner of Commercial Taxes Muzaffarpur [East] Commercial Taxes Circle, Muzaffarpur.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Gautam Kumar Kejriwal
For the Respondent/s : Mr. Raj Nandan Prasad- S.C.- 9

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

4 01-09-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 25.03.2015 passed by the Assistant Commissioner of Commercial Taxes, Muzaffarpur (East), by which he has rejected the application of the petitioner for review of the assessment order dated 17.04.2014 and for quashing the order dated 17.04.2014 passed by the ACCT for the period 2012-13 as also for consequential reliefs.

The petitioner is engaged in manufacturing and sale of fly ash bricks in the State of Bihar and is a registered dealer under the Bihar Value Added Tax Act.

With respect to the financial year 2012-13, a notice under Section 56 (1) of the Act was issued calling upon the petitioner to produce the books of accounts on 17.04.2014 in order to ascertain the figures returned by the petitioner in quarterly returns, revised returns, annual returns and TAR. The petitioner on 17.04.2014 was represented by its accountant and representative and certain books of accounts were produced, but admittedly did not produce the cash book, manufacturing account and daily sale register and for the said reason disbelieving the account of the petitioner, the Assistant Commissioner proceeded to make assessment, which he has done by indicating that as compared to the previous year the revenue collection target for the circle 2012-13 has been enhanced by 76.6% and accordingly, the Gross Turn Over of the petitioner has also been enhanced and tax and penalty has been imposed upon the petitioner by the impugned order dated 17.4.2014. The petitioner filed a review application on 24.03.2015, in which he has explained the so called anomalies in the different figures as pointed out in the order dated 17.04.2014, but the same was rejected by the order dated 25.3.2015 on the ground that there is no mistake apparent in the order dated 17.04.2014 passed under Section 27 (1) and 24 (10) of the Act and the order has been passed by the previous ACCT, hence, under the provisions of Section 76 of the Bihar Value Added Act and Rule 48 of the Bihar Value Added Rules, the order cannot be reviewed.

Learned counsel for the petitioner submits that the failure to entertain the review application amounts to non exercise of jurisdiction vested in law upon the ACCT, as the petitioner had clearly pointed out the errors in the order sought to be reviewed which is apparent on the record by producing all the books of accounts, including the cash book, ledger, journal and daily sale register, yet without dealing with the same a stand has been taken that there is no error apparent on the face of the record.

Moreover, it is submitted that under Section 76 read with Rule 48, it is evident that the successor Assessing Officer can review any order after obtaining previous sanction of the Commissioner. Thus it has wrongly been stated in the impugned order dated 17.04.2014 that the review of the earlier order was not possible.

Learned counsel also assails the order dated 17.04.2014 stating that the same cannot be sustained on any legal basis, as there cannot be a best judgment assessment on the basis of any target, real or imaginary, fixed by the respondent-Commercial Taxes Department and any best judgment assessment must be based upon facts and figures which justify such assessment.

It is further submitted by learned counsel for the petitioner that the matter requires to be remanded to the Assessing Officer since all the documents produced before the Assessing Authority were not examined by him and if he had earlier wanted to look into further books of accounts, etc., an opportunity of producing the same should have been given to the petitioner and thus the entire order under Section 76 of the Act is vitiated on account of denial of proper opportunity of hearing to the petitioner.

Learned counsel for the State has made a vigorous attempt to support the order dated 25.03.2014 but is unable to point out any valid and legal reasons indicated therein for holding that there was no apparent error on the record, in the face of the explanations given by the petitioner in the review application itself.

Moreover, he is not in a position to justify the rejection of the review application under the provisions of the Act and Rules.

Learned counsel for the State is also unable to justify the action of the respondent Assessing Officer in not granting at least one opportunity to the petitioner to produce books of accounts which he had prayed for by granting even a single adjournment in the matter.

In the facts and circumstances of the case, we are of the view that the respondent Assistant Commissioner, Commercial Taxes Department has acted in the manner contrary to law in the present matter both with respect to the order dated 25.3.2015 rejecting the review application as also in passing the original assessment order dated 17.04.2014. If the petitioner makes out a case for review, then it would be incumbent upon the successor Assessing Officer to proceed with the review application after obtaining the previous sanction of the Commissioner, Commercial Taxes.

Moreover, no justifiable ground has been stated in the order under review by stating that there was no apparent error on the record when several explanations have been submitted by the petitioner in the review application itself.

This Court also completely fails to appreciate the action of the ACCT in passing the order dated 17.04.2014 without giving a further opportunity to the petitioner to produce the remaining books of accounts.

The further action in making a best judgment assessment on the basis of the increase in the tax target for the Circle is in complete violation of the principles of making a best judgment assessment. As it is, this Court is of the view that the system of fixing the target for revenue officials to make collection is completely unjustified and productive of grave public mischief. Once the legislature has laid down the law with regard to taxation and the rates and the manner they have to be paid or assessed have been provided under the Act and the Rules, then all that the Officers of the Taxing Department are supposed to see is that the tax is paid or collected in accordance with law. The target may only create unnecessary pressure upon the Tax Departments and thereby compel them to collect tax in any manner, legal or illegal, from the assessee just to meet the target and not to act in accordance with the mandate laid down by the Legislature.

In the light of the aforesaid discussions, both the impugned orders dated 25.03.2015 and 17.04.2014 of the Assistant Commissioner of Commercial Taxes, Muzaffarpur (East) are quashed and the matter is remanded to the respondent No.3 to proceed to make the assessment afresh after providing an opportunity to the petitioner to produce all the relevant books of accounts which are considered relevant by the Assessing Officer.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Anjana Mishra, J)

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