IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5037 of 2015

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M/s Madhav Enterprises, a Proprietorship firm having its place of buisness at Gola Road, Danapur, Town and District-Patna through its Proprietor Sudhir Kumar Verma, Son of Sri Bharat Bhushan, Resident of Gola Road, Danapur Cantt, P.S.- Danapur, Dist. Patna.

.... Petitioner/s

Versus

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

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Agrawal
Ms. Anubhuti Modi

For the Respondent/s : Mr. Raj Nandan Prasad, S.C.9
Mr. Gopal Krishna, A.C. to S.C.9

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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 13-08-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 20.01.2015 passed by the Commercial Taxes Officer, Buxar Circle, Buxar, by which he has imposed penalty of Rs. 1,30,252.50 against the petitioner under Section 56 (4) (b) read with Section 61 (3) of the Bihar Value Added Tax Act, 2005 and for consequential directions.

The petitioner being a proprietorship firm states to be dealing with various agriculture implements both manually operated and animal driven like Tasla, Khurpa, Sickle, Spade, Grafting Knife, Sprayer, Kudal, etc. and in course of business used to purchase the same locally and also from outside the State of Bihar. The petitioner's consignment of Tasla approximately 15000 K.G. in all was being brought from Delhi having been purchased from M/s. Marshal Steel & Agro Industries worth Rs.8,23,350/- for delivery at Patna carrying invoice dated 24.12.2014, having transport challan of Dubey Road Lines. It was also carrying Suvidha Incoming Form D-IX, where the description of the goods was wrongly shown as agricultural implements not operated manually or driven by animal and spare parts, accessories and components thereof. The vehicle in question, instead of crossing through the Karmnasha Integrated Check Post as mentioned in Suvidha Incoming Form-D-IX, had diverted to Buxar ostensibly by the driver for taking a shorter route and was intercepted by the authority of the Commercial Taxes Department on 31.12.2014. Upon inspection, the truck and goods laden thereon were seized and notices were issued to the petitioner as to why penalty be not imposed under Section 56 (4) (b) read with Section 61 (3) of the Bihar VAT Act for violation of the provisions of Sections 56 (4) (a) and 61 (2) of the said Act.

The petitioner filed a show cause before the respondent authority claiming that Tasla was an agricultural implement, manually operated or driven by animal which comes under Schedule-1, Serial No.1 of the Bihar VAT Act. It was stated that the same was being used in agriculture for sprinkling seeds and fertilizer and it is light in weight about 750 gms. which cannot be used for cooking or other household purpose. It is also the stand of the petitioner that in as many as ten States, including U.P., Jharkhand, Madhya Pradesh, Rajasthan, Haryana, Jammu & Kashmir and Delhi, Tasla comes under the heading of agricultural implements operated manually or driven by animal and Tasla has been specifically enumerated under the exempted category and thus it should be treated under the same category under the Bihar VAT Act also, where in the relevant entry only the broad description of agricultural implements operated manually or driven by animal has been given.

Learned counsel for the petitioner also relies upon an order dated 20.4.2014 passed by the Deputy Commissioner of Commercial Taxes, Integrated Check Post, Karmnasha (Kaimur) itself in which a similar consignment of the petitioner was under consideration and ultimately by the said order it was held to be an agricultural implement manually operated and driven by animal and, therefore, exempted under Schedule-1 Serial No.1 as per Section 7 of the Bihar VAT Act.

However, by the impugned order dated 20.01.2015, the Commercial Taxes Officer, Buxar Circle, Buxar, held that since the word Tasla has not been included in the Schedule, hence, it has to be kept in the category of cooking utensils because it is a vessel made of iron and for the said reason three times penalty under the aforesaid provisions has been imposed. Aggrieved by the same, the petitioner has approached this Court.

Learned counsel for the petitioner reiterates the stand taken by the petitioner before the respondent authority. It is submitted by learned counsel that as against the detailed description given in the other States of which the Schedules have been annexed as Annexure-3 series to the writ petition, it is only a general category mentioned in Serial No.1 of the Schedule, namely, manually operated or animal driven. It is submitted that in the Schedules of the VAT Acts of States, like U.P., Punjab, Jharkhand, Rajasthan, Madhya Pradesh and Jammu and Kashmir, which have been annexed to the writ petition, different types of agricultural implements have been mentioned in which Tasla has also been included as agricultural implement manually operated or animal driven, apart from others.

It is, thus, submitted by learned counsel for the petitioner that there can be no reason for not treating the Tasla as agricultural implement manually operated or animal driven. Learned counsel also refers to a clarification dated 17.06.2002 issued by the Commissioner, Sales Tax, Jammu and Kashmir Government, Srinagar, in which it was stated that the Tasla made of iron and used as an ordinary agriculture implement is exempted from payment of sales tax in terms of the relevant entry.

Learned counsel for the State, on the other hand, states that Tasla has not specifically been enumerated as an exempted good under Schedule-1 of the Bihar VAT Act and there is no infirmity in the impugned order. It is urged that the petitioner cannot be permitted to take any advantage of the provisions of the VAT Acts of other States, where Tasla has been specifically enumerated.

Having considered the submissions of learned counsels for the parties, we find sufficient force in the submissions of learned counsel for the petitioner. Like the VAT Acts of other States, relevant part of which has been produced before us, there is no detailed description of agricultural implements in Schedule-1 of the Bihar VAT Act “Agricultural implements manually operated or animal driven”. In the said circumstances, the principle to be applied is that of common parlance. Any such entry in the

Schedule specifically exempted by the State of U.P. or other States cannot normally be of any use for the interpretation of the Schedule of the Bihar VAT Act, but where a general heading or categorization as of agriculture implements operated manually or driven by animal is followed by a detailed description of agricultural implements in the said enactments, particularly in neighbouring States sharing similar agricultural implements, assistance can be taken from the said description of agricultural implements in the Schedule of those enactments. It is evident that Tasla is treated as an agricultural implement manually operated or driven by animal in the neighbouring States including up to Punjab and is also covered by the clarification issued in Jammu and Kashmir. Thus, it cannot be said that Tasla does not come under Serial No.1 of Schedule-1 of the Bihar VAT Act. Therefore, it can be safely inferred that Tasla is used in this State also as an agriculture implement operated manually or driven by animal. The said interpretation had also been accepted by the Department in the case of the petitioner itself by order dated 20.4.2014 passed by the Deputy Commissioner of Commercial Taxes, Integrated Check Post, Karmnasha (Kaimur). There does not seem to be any good reason to take a different view in the present matter, particularly when not only the above provisions have been produced before him but also the earlier order passed by his superior authority in the case of the petitioner itself.

In the said circumstances, it can be presumed that the petitioner had in his mind that the goods in question were exempted under Serial No.1 of Schedule 1 of the Bihar VAT Act. That being the position, there would have been no requirement to have carried any such declaration, etc., as under Section 60 (2) of the Bihar VAT Act since only a person transporting goods other than those specified in Schedule-1 is required to carry a correct and complete declaration and produce the same for crossing the Check Post to the authority or the officer concerned. Thus, the Commercial Taxes Officer in the impugned order has merely relied upon conjectures and surmises in holding that the same can be used for cooking utensil also not at all taking into account the fact that the petitioner is a dealer in agricultural implements, which fact has not been denied by the respondents at any stage.

We are of the view that Tasla, which was being carried by the petitioner, is squarely covered under Serial No.1 of Schedule-1 of the Bihar VAT Act and thus the same is exempted from tax under Section 7 of the Bihar VAT Act.

In the said circumstances, there being no tax leviable on the goods there is no question of three times penalty thereon as three times of zero tax would itself amount to zero penalty.

In the light of the aforesaid discussions, the writ application is allowed. The impugned order dated 20.1.2015 is quashed.

It is stated by learned counsel for the petitioner that in order to get the goods released the petitioner was compelled to deposit the amount of Rs.1,30,253/-. Let the same be refunded to the petitioner within a period of six weeks from today.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

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