IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5912 of 2016

==

M/s Tata International Ltd., a Limited Company duly incorporated under the Indian Companies Act, 1956 having its registered office at Trent House, G Block, C - 60, Bandra - Kurla Complex, Bandra (East), Mumbai - 400051 through its Senior Manager (F & A) Sri Ashim Ganguly son of Late Dilip Kumar Ganguly, Resident of 3/2, P.K. Ganguly Road, Bally, Howrah, West Bengal - 711201, P.S. Bally, Town and District Howrah (West Bengal).

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna, New Secretariat, Patna.
2. The Joint Commissioner of Commercial Taxes (Administration), Gaya Division, Gaya.
3. The Deputy Commissioner of Commercial Taxes, Sasaram Circle, Sasaram.

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. S.D.Sanjay, Sr. Advocate.
Mr. Alok Kumar, Advocate.

For the Respondent/s : Mr. Vikash Kumar, SC 11

==

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 30-08-2016

The challenge in the present writ petition is to an order dated 1st September, 2015 passed by the Assessing officer purported to be under Section 47 of the Bihar Finance Act (hereinafter referred to as the 'Act') read with Rule 32 of the Bihar Sales Tax Rules, 1983 (hereinafter referred to as the 'Rules').

2. The petitioner is a dealer registered under the provisions of the Bihar Finance Act and under the provisions of the Bihar Value Added Tax Act, 2005 with effect from 01.04.2005. The petitioner has

been awarded contract for establishment of power transmission line i.e., 400 KV Biharsharif Sasaram Transmission Line Project by Letter of Allotment dated 24th March, 1999 by the Power Grid Corporation of India.

3. The petitioner was assessed on 24.02.2004 for the assessment year 2000-01 under the provisions of the Act. In appeal, the matter was remanded back to the Assessing Authority. Thereafter, a fresh order of assessment was passed on 21st July, 2005 under the provisions of the Act.

4. The order passed by the Assessing Authority on 21st July, 2005 resulted into excess tax deposit of Rs. 84,26,890/-. The petitioner demanded refund of the said amount. But instead of refund, the Joint Commissioner of Commercial Taxes (Administration) directed the Deputy Commissioner of Commercial Taxes to review the order passed in relation to assessment year 2000-01 under Section 47 of the Act read with Rule 32 of the Rules. It is, thereafter, the impugned order was passed by the Assessing Officer on 1st September, 2015 so as to review its earlier order of refund of Tax.

5. Learned counsel for the petitioner vehemently argued that the Assessing Officer cannot review the order in terms of Rule 32 of the Rules. It is contended that in terms of Rule 32, without the permission of the Commissioner, the review could not be allowed

after one year and that the succeeding officer cannot pass an order of review without the permission of the Commissioner. It has further been contended that the Joint Commissioner of Commercial Taxes (Administration) could not issue any administrative direction for review of order unless the competent Commissioner of Commercial Taxes exercises his power of revision, as conferred under Section 46(4) of the Act. Such an order can be passed only after providing an opportunity of hearing to the dealer.

6. The relevant provisions of the Bihar Finance Act and the Bihar Sales Tax Rules read as follows:

> Section 46. Revision.-(1) Subject to such rules as may be made by the State Government an order passed on an appeal under sub-section (1) or (2) of Section 45 may, on application, be revised by the Tribunal.
>
> (2) Subject as aforesaid any order passed under this part or the rules made thereunder, other than an order passed by the Commissioner under sub-section (5) of section 9 or an order against which an appeal has been provided in section 45 may, on application be revised-
>
> > (a) by the Joint Commissioner, if the said order ahs been passed by an authority not above the rank of Deputy Commissioner; and
> >
> > (b) by the Tribunal, if the said order has been passed by the Joint Commissioner or Commissioner.
>
> (3) Every application for revision under this section shall be filed within ninety days of the communication of the order which is sought to be revised, but where the authority to whom the application lies is satisfied that the

applicant had sufficient cause for not applying within time, it may condone the delay.

(4) The Commissioner may, suo moto call for and examine the record of any proceeding recorded by any authority, officer or person subordinate to him under this Act and if he considers that any order passed therein is erroneous in so far as it is prejudicial to the interest of revenue, may pass such order as he deems fit after giving the dealer or the person concerned an opportunity of being heard.

(5) No order under this section shall be passed without giving the appellant as also the authority whose order is sought to be revised or their representative, a reasonable opportunity of being heard.

(6) Any revision against an appellate order filed and pending before the Joint Commissioner or a revision against any other order filed and pending before the Deputy Commissioner since before the enforcement of this part shall be deemed to have been filed and/or transferred respectively to the Tribunal and the Joint Commissioner; and any revision relating to a period prior to the enforcement of this part against an appellate order, or against any other order passed by an authority not above the rank of Deputy Commissioner shall, after the enforcement of this part, be respectively filed before the Tribunal and the Joint Commissioner.

<u>47. Reviews.-</u> Subject to such rules as may be made by the State Government under this part any authority appointed under Section 9 or the Tribunal may review any order passed by it, if such review is, in the opinion of the said authority or Tribunal, as the case may be, necessary on account of a mistake which is apparent from the record;

Provided that no such review, if it has the effect of enhancing the tax or penalty or both, or of reducing a refund shall be made unless the said authority or the

Tribunal, as the case may be, has given the dealer, or the person concerned a reasonable opportunity of being heard.

Rule 32.Review.-(1) When any authority appointed under section 9 reviews under Section 47 any order passed under the Act it shall record reasons for doing so.
(2) Save with the previous sanction of the Commissioner or an authority specifically authorized by him in this behalf no authority appointed under Section 9, other than the Commissioner, shall review any such order except before the expiry of twelve months from the date of passing of the order which is sought to be reviewed.
(3) Save with the previous sanction of the Commissioner or an authority specifically authorized by him in this behalf, no authority appointed under section 9, other than the Commissioner, shall review any order which has been passed by any of its predecessors in office."

7. The learned counsel for the petitioner further contends that there is no sanction of the Commissioner or any authority specifically authorized by him authorizing the Assessing Officer to review the order passed by its predecessor. Such sanction has to be specific and cannot be implied when the Joint Commissioner of Commercial Taxes directed the Assessing Officer to pass an order afresh.

8. On the other hand, learned counsel for the State submits that the Joint Commissioner of Commercial Taxes (Administration), while considering the refund application of the year 2012, found patent illegality in the order and, therefore, directed the Assessing

Officer to consider the assessment fresh in the proper prospective. Therefore, order passed by the Assessing Officer on 1st September, 2015 cannot be said to be in violation of any provision of the statutes.

9. We have heard learned counsel for the parties and find that the action of the Assessing Officer to review an order on 1st September, 2015 cannot be sustained in law. The power of review is conferred under Section 47 of the Act. The authority can review the order if it finds mistake, which is apparent from the record.

10. In terms of Rule 32 of the Rules, the power of review can be exercised by any authority, other than the Commissioner, except before expiry of 12 months from the date of passing of the order which is sought to be reviewed.

11. Mr. Vikash Kumar, learned counsel for the State, argued that there is no time limit prescribed for review of the order in terms of sub-rule (2) of Rule 32. Therefore, the order of review could be passed even in the year 2015 though the earlier order was passed in the year 2006.

12. We do not find any merit in the stand of the State. Even if it is assumed that there is no time limit prescribed to exercise the power of review, but such power cannot be exercised at any time. Such power of review can be invoked within a reasonable time. What is reasonable time depends upon facts of each case. In a judgment

reported as Collector v. D. Narsing Rao, (2015) 3 SCC 695**,** the Supreme Court held that that the suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation, was arbitrary and opposed to the concept of rule of law**.** The Court held as follows:-

> **"**12.1. In the decision in *State of Gujarat* v. *Patil Raghav Natha, (1969) 2 SCC 187: (1970) 1 SCR 335* this Court while adverting to Sections 65 and 211 of the Bombay Land Revenue Code, 1879 held that though there is no period of limitation prescribed under Section 211 to revise an order made under Section 65 of the Act, the said power must be exercised in reasonable time and on the facts of the case in which the decision arose, the power came to be exercised more than one year after the order and that was held to be too late.
>
> 12.2. In the decision in *Mohd. Kavi Mohamad Amin* v. *Fatmabai Ibrahim,(1997) 6 SCC 71* this Court while dealing with Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976 held that though the said section does not prescribe for any time-limit for initiation of proceeding such power should be exercised within a reasonable time and on the facts of the case, the suo motu enquiry initiated under the said section after a period of nine months was held to be beyond reasonable time.
>
> 12.3. In the decision in *Santoshkumar Shivgonda Patil* v. *Balasaheb Tukaram Shevale,(2009) 9 SCC 352 : (2009) 3 SCC (Civ) 749* this Court while dealing with the power of revision under Section 257 of the Maharashtra Land Revenue Code, 1966 held as follows: (SCC pp. 356-57, paras 11-12)
>
> > "*11.* It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time.

It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein.

12. Ordinarily, the reasonable period within which the power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of the Tahsildar passed on 30-3-1976 is flawed and legally not correct."

17. In the light of what is stated above we are of the view that the Division Bench {*Collector v. D.Narasing Rao, 2010SCC OnLine AP 406: (2010) 6 ALD 748}* of the High Court was right in affirming the view of the learned Single Judge of the High Court that the suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law."

13. There cannot be uncertainty in respect of tax liability of an assessee in as much as after 09 years, the right of the petitioner to such refund cannot be annulled under the guise of power of review. The review could not be exercised at that stage after many years of the passing of the order. Such power has not been exercised within reasonable time of the order passed.

14. In respect of an argument that the Joint Commissioner of Commercial Taxes (Administration) has exercised the revisional jurisdiction when the matter was directed to be decided by the Assessing Officer, thus, it cannot be said to be procedural irregularity. But we find that the communication, Annexure-6 and 6A dated 6th July, 2013, is not an order in exercise of power of revisional jurisdiction conferred under Section 46(4) of the Act. It is an administrative direction given to the Assessing Officer to exercise the quasi judicial function in a particular manner. The Joint Commissioner of Commercial Taxes (Administration) has no power to direct the Assessing Officer to adjudicate the assessment proceeding in any particular manner. This is unheard direction in law.

15. The communications, Annexure-6 and 6A, are not quasi judicial order as well as sub-section (4) of Section 46 of the Act contemplates that an order in revision can be passed after giving an opportunity to the dealer or the person concerned. It could not be pointed out that the Joint Commissioner of Commercial Taxes (Administration) had issued any notice to the petitioner before passing such a direction in its communication dated 6th July, 2013.

16. Thus, on either counts, we find that the order of assessment on refund petition cannot be said to be justified. It is passed upon a direction issued while exercising administrative

powers. Secondly, such order could not have been passed without giving an opportunity of hearing to the petitioner. Still further, the Assessing Officer could not review order after expiry of 09 years. Such power could be exercised within reasonable period. The period of nine years cannot be said to be reasonable period. It is patently illegal and thus, set aside. Consequently, the Assessing Officer is directed to issue refund to the petitioner in accordance with law expeditiously.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	15.09.2016
Transmission Date	