IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8897 of 2016

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United Spirits Ltd. a company incorporated under the Companies Act, 1956 having its registered office at UB Towers 24 , Vittal Mallya Road, Bangalore and its Works at Hathidah, PO+PS Hathidah, District Patna though its Senior Manager (Accounts) Rajesh Kumar Sono f late Muneshwar Pandit Resident of Hathidah, Po+PS Hathidah, District Patna.

.... Petitioner/s

Versus

1. State of Bihar Through The Commissioner of Commercial Taxes , Bihar Patna having its Office at Vikas Bhawan, Bailey Road, Patna.
2. Dy. Commissioner of Commercial Taxes (Incharge) Barh Circle, Barh, District Patna.

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Vikash Kumar, A.C. to PAAG

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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)

5 05-07-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 11.04.2016 passed by the Deputy Commissioner of Commercial Taxes, (Incharge) Barh Circle, Barh, Patna under Section 31 of the Bihar Value Added Tax Act, 2005 for the period 2009-10 and consequent notice dated 11.03.2016.

It is submitted by learned counsel for the petitioner that scrutiny of the petitioner's return was made under Section 25 (1) of the Act, during the course of which the entire books of accounts were produced and as per order dated 24.05.2011 passed under Section 25 (1) of the Act they were duly looked into. Thereafter, the order was passed and demand notice issued only on the basis of an audit objection that the purchase of cartons shown by the petitioner from I-Pack and Well Pack by it did not tally with the TAR filed by the said two dealers.

It is stated by learned counsel for the petitioner that notices under Section 33 and thereafter under Section 31 of the Act were issued, upon which the petitioner appeared before the respondent No.2 along with the written submission stating that the it had not made purchases as alleged in the CAG report and its purchases were properly disclosed in the return and there are no outstanding dues and further the petitioner asserted that its submissions be verified with reference to the books of accounts of the said dealers. It is further stated that after receiving the written submissions, the respondent No.2 asked the petitioner to come on another day as he was pre-occupied with other matters and the next date of hearing would be communicated. But without any further communication, the ex parte order of assessment has been passed without giving reference to any evidence in support of the same.

Learned counsel for the State has sought to support the aforesaid order on the basis of the audit objection.

In our view, the audit objection may be the starting point of re-assessment under Section 33 or even under Section 31 of the Act but anything stated therein cannot be treated as the last word on the subject, particularly when ample powers have been conferred under Section 12 of the Act and other provisions thereof upon the assessing authority to examine the discrepancy in the purchase of carton from I-Pack and Well Pack as per the TAR returns filed by two suppliers and come to a conclusion as to whether the discrepancy is on account of something suppressed by the petitioner in his account. The discrepancy or suppression may also be in the accounts of the suppliers of the petitioner which can only be done by verifying the books of accounts and other documents, if so required. But without having done so, taking the easy way out, the Deputy Commissioner of Commercial Taxes (Incharge), Barh has chosen to pass an order, which is completely a non-speaking order and based upon no evidence at all.

In the above circumstances, the impugned order dated 11.4.2016 and the consequent demand notice dated 11.04.2016 are both quashed and the matter is remanded to the Assessing Officer to proceed in the matter afresh in accordance with law. For the said purpose, petitioner shall appear before the respondent No.2 on 26th September, 2016 at 11 A.M. along with its written submission and documents in support of its claim and thereafter the respondent No.2 shall proceed in the matter in accordance with law, keeping in view the observations made by us in this order.

The writ application is, accordingly, disposed of.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

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