IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.724 of 2014

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M/s ACC Ltd., a Company incorporated under the provision of Companies Act, 1956 having one of its Branch Office at S.P. Verma Road, Patna through its Tax – incharge, Aditi Awasthi, D/o Rama Kant Awasthi, Resident of C/o ACC, Limited, 2nd Floor, Samriddhi Complex, S.P. Verma Road, P.S. Kotwali, District - Patna

.... Appellant

Versus

1. The State of Bihar through the Secretary - Cum - Commissioner of Commercial Taxes, Vikash Bhawan, Bailey Road, Patna
2. The Secretary, Commercial Taxes Tribunal, Bihar, Patna
3. The Joint Commissioner of Commercial Taxes (Appeal), Central Division, Patna
4. The Deputy Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondents

with

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Miscellaneous Appeal No. 725 of 2014

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M/s ACC Ltd., a Company incorporated under the Provision of Companies Act, 1956 having one of its Branch Office at S.P. Verma Road, Patna through its Tax - incharge Aditi Awasthi, D/o Rama Kant Awasthi, Resident of C/o ACC, Limited, 2nd Floor, Samriddhi Complex, S.P. Verma Road, P.S. Kotwali, District - Patna

.... Appellant

Versus

1. The State of Bihar through the Secretary - Cum - Commissioner of Commercial Taxes, Vikash Bhawan, Bailey Road, Patna
2. The Secretary, Commercial Taxes Tribunal, Bihar, Patna
3. The Joint Commissioner of Commercial Taxes (Appeal), Central Division, Patna
4. The Deputy Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondents

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Appearance :

For the Appellant : Mr. S.D. Sanjay, Sr. Advocate.
Mr. Alok Kumar Agrawal, Advocate.

For the Respondents : Mr. Vikash Kumar, A.C. to PAAG

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 16-03-2016

Heard learned counsel for the appellant and the State.

2. These appeals under Section 79(2)(i) of the Bihar Value Added Tax Act, 2005 are directed against an order passed by the Commercial Taxes Tribunal, Bihar, Patna on 25th of August, 2014 in Revision Case No. PT-140/2011 and Revision Case No. PT-141/2011 pertaining to Assessment Year 2003-04 and 2004-05, whereunder the learned Tribunal refused to interfere into the order dated 09th of June, 2011 passed by Learned J.C.C.T.(A), Central Division, Patna, whereunder the Appeal Case No. ST/SL-86/2010-11 for the period 2003-04 and ST/SL-87/2010-11 for the period 2004-05 were dismissed at the admission stage itself on the ground of limitation.

3. Assessment for the year 2003-04 and 2004-05 were finalized on 25th of February, 2006. However, appeal against the said order was preferred after delay of four years and eleven months, which were dismissed by the learned Joint Commissioner, Commercial Taxes (Appeal) on the ground of limitation.

4. We find that following substantial question of law arises for consideration :

Whether in the facts and circumstances of the case the Joint Commissioner, Commercial Taxes (Appeal), Central Division, Patna and the Tribunal have erred in law in not condoning the delay in filing the appeal?

5. Learned counsel for the appellant pointed out that the question as to whether gunny bags had to be charged at the rate as of the cement or whether trade discounts are allowable or not are the subject matter of consideration before this Court in C.W.J.C. No. 4050 of 2003 and other analogous cases pertaining to earlier assessment years.

6. Since the matter is pending before this Court on the same issue as are raised by the appellant, therefore, the appellant under mistaken advice did not file an appeal before the appellate authority within the period of limitation.

7. Since the issue is legal and is under consideration before this Court, it would be appropriate to condone the delay and to hear the appeals on merit in accordance with law.

8. It could not be disputed that the issue raised by the appellant are pending before this Court in C.W.J.C. No. 4050 of 2003. Once the issue is pending before this Court, pertaining to earlier assessment years, it will not be advisable to shut the door for consideration

for the appellant in respect of the assessment years in question. Therefore, we deem it appropriate to condone the delay of four years and eleven months in filing of the first appeal.

9. Consequently, the order dated 09th of June, 2011 passed by the appellate authority i.e. Learned J.C.C.T.(A), Central Division, Patna in Appeal Case No. ST/SL-86/2010-11 and ST/SL-87/2010-11 for the period 2003-04 and 2004-05 and the order dated 25th of August, 2014 passed by Commercial Taxes Tribunal, Bihar, Patna are set aside and the matter is remitted back to the Joint Commissioner, Commercial Taxes (Appeal) for decision in accordance with law.

10. The appeals are, thus, allowed.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

P.K.P.

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