IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4362 of 2015

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1. M/s FERROVIA TRANSRAIL SOLUTIONS PRIVATE LIMITED, a private limited company incorporated and registered under th Indian Companies Act, 1956 and having its registered office at 14th Floor, Antarikash Bhawan, 22, Kasturba Gandhi Marg, New Delhi - 11001 and Administrative office at CS-8-10, 6th Floor, Tower-A, The Corenthum, A-41, Sector - 62, Noida - 201301 (UP) through its Head Taxation and power of attorney holder Sri Sukuma Ray Choudhary son of Late Murari Mohan Ray Choudhary, resident of A-20, Regent Park, Rahra, Kolkata - 700118.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary cum Commissioner of Commercial Taxes, Bihar, New Secretariat, Patna.
3. The Deputy Commissioner of Commercial Taxes, Sasaram Circle Sasaram.
4. The Assistant Commissioner of Commercial Taxes, Sasaram Circle, Sasaram.
5. The Assistant Commissioner of Commercial Taxes, I.B., Magadh Division, Gaya.
6. M/s Dedicated Freight Corridor Corporation of India Limited (DFCCIL), (A Government of India Enterprises), having its Head Office at 5th Floor, Pragati Maidan Metro Station Building Complex, New Delhi - 110001 and its one of the Regional Offices at Shyamakunj, Plate No. 122/1, Dafi, (Varanashi - Mugalsarai Byepass), P.O. Naipura, P.S. Lanka, Varanashi - 221011 (U.P.) and also one of is project offices is situated in Sasaram (Bihar) at Old G.T. Road (In front of Circuit House) Sasaram, District - Rohtas (Bihar).

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.22083 of 2014

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1. M/s Ferrovia Transrail Solutions Private Limited, a private limited company incorporated and registered under the Indian Companies Act, 1956 and having its registered office at 14th Floor, Antarikash Bhawan, 22, Kasturba Gandhi Marg, New Delhi - 110001 and Administrative Office at CS - 8 - 10, 6th Floor, Tower - A, The Corenthum, A - 41, Sector - 62, Noida - 201301 (UP) through its Head Taxation and power at Attorney holder Sri Sukumar Ray Choudhary son of Late Murari Mohan Ray Choudhary, resident of A - 20, Regent Park, Rahra, Kolkata - 700118.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary cum Commissioner of Commercial Taxes, Bihar, New Secretariat, Patna.
3. The Deputy Commissioner of Commercial Taxes, Sasaram Circle, Sasaram.
4. The Assistant Commissioner of Commercial Taxes, Sasaram Circle,

Sasaram.
5. The Assistant Commissioner of Commercial Taxes, I.B. Magadh Division, Gaya.
6. M/s Dedicated Freight Corridor Corporation of India Limited (DFCCIL), (A Government of India Enterprises), 5th Floor, Pragati Maidan Metro Station Building Complex, New Delhi - 110001 through its Group General Manager/CO/EC.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.4806 of 2015

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1. M/s Ferrovia Transrail Solutions Private Limited, a private limited company incorporated and registered under the Indian Companies Act, 1956 and having its registered office at 14th Floor, Antarikash Bhawan, 22, Kasturba Gandhi Marg, New Delhi-110001 and Administrative office at CS-8-10, 6th Floor, Tower-A, The Corenthum, A-41, Sector-62, Noida-201301 (UP) through its power of attorney holder and Jr. Executive-Accounts Sri Shri Vivek. Son of Sri Amrendra Kumar Singh. Resident of House No. 444, New Area, Near Gayatri Mandir, Sasaram, P.S.- Muffasil Thana, Sasaram and District - Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary cum Commissioner of Commercial Taxes, Bihar, New Secretariat, Patna.
3. The Deputy Commissioner of Commercial Taxes, Sasaram Circle, Sasaram.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.9276 of 2015

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1. M/s Ferrovia Transrail Solutions Private Limited, a private limited company incorporated and registered under the Indian Companies Act, 1956 and having its registered office at 14th Floor, Antariksh Bhawan, 22, Kasturba Gandhi Marg, New Delhi- 110001 and Administrative office at CS-8-10-6th Floor, Tower-A, The Corenthum, A-41, Sector-62, Noida-201301 (UP) through its power of attorney holder and Jr. Executive-Accounts Sri Shri Vivek son of Sri Amrendra Kumar Singh, resident of House No.444, New Area, Near Gayatri Mandir, Sasaram, P.S. Muffasil Thana, Sasaram and District Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary cum Commissioner of Commercial Taxes, Bihar, New Secretariat, Patna.
2. The Deputy Commissioner of Commercial Taxes, Sasaram Circle, Sasaram.
3. The Assistant Commissioner of Commercial Taxes, Sasaram Circle, Sasaram.

4. The Chief Project Manager, M/s Dedicated Frieght Corridor Corporation of India Ltd. (DFCCIL) (A Govt. of India Enterprises) Shyamkunj, Plot No.-122/1, DAFI (Varansi- Mugalsarai Bypass), P.O.- Nepura, P.S.- Lanka, Varansi-221011 (Utter Pradesh).

.... Respondent/s

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Appearance :

(In CWJC No.4362 of 2015)
For the Petitioner/s : Mr. Ramesh Kumar Agrawal
Mr. Shive Kumar
For the State Respondents: Mr. Vikash Kumar, A.C. to PAAG
For the DFCCIL: Mr. Ashok Kumar Keshari

(In CWJC No.22083 of 2014)
For the Petitioner/s : Mr. Ramesh Kumar Agrawal
Mr. Shive Kumar
For State Respondents : Mr. Vikash Kumar, A.C. to PAAG
For the DFFCCIL : Mr. Ashok Kumar Keshari

(In CWJC No.4806 of 2015)
For the Petitioner/s : Mr. Ramesh Kumar Agrawal
Mr. Shive Kumar
For the Respondents : Mr. Purnendu Singh- G. P.27

(In CWJC No.9276 of 2015)
For the Petitioner/s : Mr. Ramesh Kumar Agrawal
Mr. Shive Kumar
For State-Respondents : Mr. Vikash Kumar, A.C. to PAAG
For the DFCCIL : Mr. Ashok Kumar Keshari

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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)

11 29-02-2016 Heard learned counsel for the petitioner and learned counsels for the State and for the Dedicated Freight Corridor Corporation of India Limited.

All the four writ applications are inter-connected and by the same petitioner and, accordingly, they have been heard together and are being disposed of by a common order.

The petitioner has filed the first writ application, namely, C.W.J.C. No.22083 of 2014 for quashing the notices bearing Nos.

495 and 496 both dated 01.12.2014 issued by the Assistant Commissioner of Commercial Taxes, Sasaram Circle, Sasaram under Sections 7 and 8 of the Bihar Tax On Entry of Goods into Local Area for Consumption, Use or Sale therein Act, 1993 for the periods 2013-14 and 2014-15 and also for quashing certain other notices and proceedings connected therewith.

C.W.J.C. No.4362 of 2015 has been filed for quashing the order of assessment and penalty dated 19.01.2015, by which Rs.6,08,13,617.74 was levied in those very proceedings as also two times penalty of Rs.12,16,27,235.48 to the petitioner.

C.W.J.C. No.9276 of 2015 has been filed by the petitioner for quashing the demand notice dated 15.06.2015 issued under Section 27 of the Bihar Finance Act, 1981 to the Chief Project Manager, Dedicated Freight Corridor Corporation of India Ltd. for deducting Rs.18,24,40,853/- from the bills of the petitioner and depositing the same in the Government Treasury.

Lastly, C.W.J.C. No.4806 of 2015 has been filed by the petitioner for quashing the order dated 31.01.2015 passed by the Deputy Commissioner of Commercial Taxes, Sasaram Circle, Sasaram, by which he has rejected the application filed by the petitioner for provisional refund of Rs.1,43,39,610/- under Section 69 of the Bihar Value Added Tax Act, 2005 on the ground that the petitioner has failed to produce any evidence in relation to payment of amount of entry tax and penalty assessed and imposed for the period 2013-14.

The petitioner has filed C.W.J.C. No.22083 of 2014 challenging the notices issued under Sections 7 and 8 of the Bihar Tax On Entry of Goods into Local Area for Consumption, Use or Sale therein Act, 1993. By order dated 09.01.2015, this Court had directed the respondent-State to file a counter affidavit clearly meeting the stand on behalf of the petitioner that M/s. Dedicated Freight Corridor Corporation of India Limited being the principal employer and the petitioner merely a contractor, how any liability of such contractor which is being supplied material by the principal employer, would arise in such matters. In the meantime, the respondents proceeded with the assessment and penalty proceedings in terms of the said notices and the petitioner on 19.01.2015 filed a representation before the Assistant Commissioner of Commercial Taxes, Sasaram Circle to keep the proceedings in abeyance until the disposal of the writ petition by this Court enclosing therein the order of this Court, by which the direction was to file the counter affidavit. The Assessing Officer took note of the said time petition as also the order of this Court dated 9.1.2015 but stated that this Court has not issued any order staying the passing of the final order in the matter and, therefore, he proceeded to pass final orders on that very day.

Learned counsel for the petitioner submits that in view of the matter pending before this Court and the time petition filed, it was not at all open to the Assessing Officer to have proceeded to pass not only the final order of assessment but also the order of penalty without giving a reasonable opportunity of hearing to the petitioner. It is, thus, submitted that there has been a violation of the principles of natural justice in passing the impugned order of assessment and penalty and the same ought to be quashed and set aside for the said reason alone.

In reply to the same, learned counsel for the State submits that on 17.12.2014, the representative of the petitioner has stated before the Assessing Officer that whatever he had to state, the petitioner has already given in written reply and appropriate order in accordance with law may be passed in terms of the said submissions.

Contesting the aforesaid, learned counsel for the petitioner replies that the order sheets of all the dates have been seen by the representative of the petitioner but the order dated 17.12.2014 does not show that it has been seen and signed by the Advocate or the representative of the petitioner. Even the impugned order dated 19.01.2015 was shown to the representative of the petitioner only on 21.02.2015.

Learned counsel for the petitioner has sought to raise various issues with regard to the validity of the proceedings in the matter and the orders passed as being contrary to the provisions of the Bihar Tax On Entry of Goods into Local Area for Consumption, Use or Sale therein Act as also different decisions of this Court and the Supreme Court in the matter.

After hearing learned counsels for the parties, we are of the view that the petitioner has not been given proper opportunity of being heard to the petitioner before passing the impugned order. Thus the matter does not require to be considered by this Court and ought to be decided by the statutory authorities themselves. In the given facts and circumstances, we are clearly of the view that the petitioner has not been given an opportunity of hearing by the Assessing Officer simply to take advantage of the fact that there was actually no stay granted by this Court, whereas the State had been directed to file counter affidavit in the matter by 23rd January, 2015 but to over-reach the same, the impugned order has been passed in haste on 19.01.2015 so as to present a fait accompli before this Court.

In the aforesaid circumstances, all the writ applications are allowed. The impugned order dated 19.01.2015 and the consequential orders of recovery are all quashed and the matters are remanded to the Assessing Officer to proceed afresh after giving an opportunity of hearing to the petitioner for the said purpose. The petitioner shall present itself before the Assessing Officer on 31.03.2016 at 11 A.M. along with all the relevant documents and records in readiness to argue the matter before the assessing authority.

So far as the order dated 31.01.2015 is concerned, by which the provisional refund for the period 2013-14 under the Bihar VAT Act has been rejected, the same is also quashed and it is left open to the respondent No.3 to pass a fresh order in accordance with law after the order of assessment, etc. is passed in the other matters by the respondents within a period of two weeks thereafter.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

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