IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.330 of 2014

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Maharashtra Hybrid Seeds Company Limited, a limited company incorporated and registered under the Companies Act, 1956 having its branch office at Ashoka Palace, 3rd floor, Chamber No. - 319, Exhibition Road, Police Station - Kotwali, Patna - 800001 through its authorised signatory Mr. Rajeeb Kumar Jha, Son of Sri Bhola Jha, Ashoka Palace, Exhibition Road, Police Station - Kotwali, Patna.

.... Appellant

Versus

1. The State of Bihar through the Commissioner cum the Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes, Central Division, Patna.
3. Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna.
4. The Assistant Commissioner of Commercial Taxes, Special Circle, Patna.
5. The Commercial Taxes Officer, Patliputra Circle, Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Rabindra Prasad, Advocate
For the Respondent/s : Mr. Vikash Kumar, AC 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)

8 31-03-2016 I.A.No. 4055 of 2014

The interlocutory application has been filed for condoning the delay of 186 days in filing the appeal.

Upon hearing learned counsels for the parties and on a consideration of the facts and circumstances of the case, the delay in filing the appeal is condoned.

I.A.No. 4055 of 2014 is, accordingly, disposed of.

Heard learned counsel for the appellant and learned counsel for the State.

The appeal has been filed against the judgment and order dated 6.8.2013 passed in Revision Case No. PT-124 of 2006 with respect to the assessment year 2001-02 under the Bihar Finance Act, 1981 by the Commercial Taxes Tribunal, Bihar by which the revision application filed by the assessee-appellant has been dismissed.

The appellant is a limited company dealing with wholesale different varieties of cereals and vegetable seeds in Bihar. It is the case of the appellant that the appellant had been realizing 4% sales tax in all the cereal seeds, including for the maize seeds and was depositing the same without any objection till the period 1997-98, which was also accepted by the Department. However, from the financial year 1998-99 the respondents started assessment of sales tax at the rate of 8% on the said seeds treating the same as unspecified on the ground that the seeds dealt with by the appellant were not covered by Section 14 of the Central Sales Tax Act, 1956 and further not covered by the Notification dated 26.12.1977. Accordingly, for the said assessment year onwards the levy of sales tax was made at 8%, including for the period 2001-02 which is under question. Aggrieved by the order of assessment for the period 2002-03 of the Assistant Commissioner the appellant filed an appeal under Section 45 of the Bihar Finance Act before the Joint Commissioner of Commercial Taxes (Appeal), Central Division, Patna being appeal case No. STSL-270 of 2003-04 and by order dated 23.12.2005 the appeal was dismissed holding that seeds will not fall within the definition of cereals as enumerated in Section 14 of the Central Sales Tax Act, 1956 as the paddy and grains when processed and marketed as seeds lose their character of being cereals, which issue has already been settled and decided in the case of M/s. SPIC PHI Seeds Ltd. vs. The State of Bihar and others and its analogous cases : 2005(3) PLJR 470. Aggrieved by the same the appellant filed a revision application under Section 46 of the Bihar Finance Act before the Commercial Taxes Tribunal, Bihar bearing Revision No. PT-124 of 2006 but the same was also dismissed by order dated 6.8.2013 of the Tribunal relying on the same judgment of the High Court.

Learned counsel for the appellant sought to assail the order of the Tribunal mainly on the ground that in all nearly 20 preceding assessment orders for the period from 1977-78 to 1997-98 the respondents have assessed the appellant at the rate of 4% and, accordingly, the appellant had also collected and realized only 4% without making the sales. Thus the respondents are debarred from charging more tax at the rate of 8% instead of 4% as in the past. Learned counsel also sought to raise several issues on merit.

In our view, no substantial question of law can arise in the present matter considering the fact that the orders of the Tribunal and the assessing authority have been passed relying upon the law laid down by this Court in the case of M/s. SPIC PHI Seeds Ltd. (supra). The orders based upon such decision of the High Court cannot be assailed merely on the ground that in the past years the appellant had been assessed at a lower rate.

In the aforesaid view of the matter, the appeal is dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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