

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4896 of 2016

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1. M/s. Kanhaiya Traders, Panchgachhiya Bazar, Naugachhiya, District - Bhagalpur through its Proprietor Kanhaiya Prasad Gupta, Son of Late Bhagwan Lal, Resident of Village and P.O. Pachgachhiya, P.S. - Gopalpur and District - Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner - cum- Principal Secretary, Commercial Taxes Department, Bihar having its office at Vikash Bhawan, Bailey Road, Patna.
3. The Joint Commissioner of Commercial Taxes (Appeal) Purnea Division, Purnea.
4. The Commercial Taxes Officer, Khagaria Circle, Khagaria.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ramesh Kumar Agrawal, Advocate

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

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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: 10-03-2016

The challenge in the present writ application is to an order, Annexure-7, dated 15.10.2015 whereby an appeal filed by the petitioner was rejected on the ground that the petitioner has not deposited 20% of the assessed amount of tax as required under section 72(2) of the Bihar Valued Added Tax Act, 2005 (for short the Act).

An order of assessment was passed by the Assistant Commissioner, Commercial Taxes, Khagaria on 08.05.2015. In terms of the assessment order, demand notice dated 19.05.2015 was



issued to the petitioner demanding a sum of Rs. 38,57,325/- as amount of tax and the interest of Rs.6987/-. The petitioner filed an appeal. The appeal was admitted but subsequently a show cause notice was issued on 24.07.2015 as to why an order admitting the appeal be not recalled. The petitioner filed a reply dated 09.10.2015 stating that he has deposited a sum of Rs.14,89,021.55 as output tax at source and, therefore, the same is deductible as Input Tax Credit. It was stated that the said amount is more than 20% of the demand raised, therefore, the petitioner satisfies the requirement of sub-section (2) of Section 72 of the Act.

Such assertion of the petitioner was rejected by the Joint Commissioner, Commercial Taxes (Appeal) on the ground that the petitioner has not produced the proof of payment of tax and that explanation given by it is vague. Therefore, the appeal is not liable to be admitted as there is non-compliance of the provisions of Section 72(2) of the Act.

Learned counsel for the petitioner has referred to acknowledgement/ receipt for payment of Value Added Tax as Annexure-2 whereby on 22.12.2014 as against total output tax of Rs.14,97,349.13 the total input tax is said to be Rs.14,96,170.77. The said amount is more than 20% of the demand raised, thus, it would comply with the statutory requirement under

sub-section (2) of Section 72 of the Act.

We have heard learned counsel for the parties. There is no counter to say that Annexure-2 is not correct. The argument of learned counsel for the State that there is no proof of payment of tax is not tenable. It is a copy of e-Return filed by the petitioner in respect of output tax and input tax deposited by the petitioner. There is no denial of the payment of input tax, as alleged by the Petitioner vide Annexure-2. Thus the petitioner has proved documents to show that 20% of the tax assessed already stands paid. Thus we find that the order rejecting the admission of appeal of petitioner suffers from illegality and irregularity. Therefore, the impugned order is set aside. The Joint Commissioner (Appeals), Purnea is directed to decide the appeal on merits.

The writ application thus stands allowed.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

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