IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5353 of 2016

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Dell India Pvt. Ltd. (Now Known As Dell International Services India Ltd.), a company incorporated under the Companies Act, 1956 having its office at B 91, Transport Nagar, P.O. Agamkuan, P.S. Agamkuan, District- Patna through its Tax Manager, B.B. Narendra, son of Shri K.T. Bettaiah, resident of 254, 10th B Cross, 29th Main J.P. Nagar, First Phase, P.O.+P.S.- J.P. Nagar, Bangalore.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna.
2. Asstt. Commissioner of Commercial taxes, South Circle, Patna.

.... Respondents

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Appearance :

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

For the State : Mr. Vikash Kumar, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 01-04-2016

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

The petitioner seeks quashing of the order dated 5.3.2016 passed by the Assistant Commissioner, Commercial Taxes, South Circle, Patna under Section 31 of the Bihar Value Added Tax Act, 2005, for the year 2014-15.

The stand of the petitioner is that it is not making any direct sale in the State of Bihar, rather on the basis of warranties issued by the sellers to the customers of its product, it only satisfies those warranties during which process it imports certain spares and those spares are used to replace free of cost any part required for fulfilling the warranty obligations.

It is the further stand of the petitioner that on entire import of Rs. 6 crores and odd, it has already paid Entry Tax for which Entry Tax Return has been filed on the same day as the VAT return as required under the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993. Both in the Entry Tax return and the VAT return whatever columns did exist, the petitioner filled up those columns but there is no column of 'inter-State transfer' and 'free replacement' and thus it could not be filled up and only the final figure has been shown in the VAT return.

It is submitted that notice dated 01.02.2016 fixing 15.02.2016 was received by the petitioner under Section 31 of the Bihar VAT Act as to why penalty be not imposed for not making full and complete disclosure in the return pursuant to which the representative of the petitioner appeared on 15.02.2016 before the Assessing Officer and prayed for a month's time so that necessary papers could be produced along with the Accounts Officer of the company, which is located in Bangalore, who could not immediately come due to internal audit going on at that place.

However, only a week's time was given and thereafter it is the stand of the Department that a notice was sent by e-mail to the petitioner fixing 27.02.2016 but on the said date the petitioner did not appear.

The stand of the petitioner is that in the said e-mail as the correct address of the petitioner was not given, it was not received by the representative and for the said reason the petitioner could not respond to the said notice and ultimately on 05.03.2016 the impugned order has been passed imposing penalty without understanding the clear case of the petitioner that it was not, in fact, making any sale of the products that were supplied for the settlement of the warranty as also the fact that there were e-Suvidha declaration forms for bringing the spares but inadvertently it did not cancel the said declarations resulting in the discrepancy in the figure which could have been fully explained on the basis of the documents in the possession of the petitioner.

On a consideration of the entire facts and circumstances of the case, we are of the view that levy of penalty is a serious matter, that too in a case where the petitioner has paid entry tax on the entire value of the goods which have been brought in by the petitioner and, in any case, if the said import of goods was ultimately treated as a sale then the set off would have had to be granted, but the same was not claimed by the petitioner simply because it was not sale and the petitioner as per its case merely supplied the goods free of cost under the warranty scheme and therefore had not made claim for the set off of the Entry Tax.

In the aforesaid facts and circumstances, the order dated 5.3.2016 is quashed and the matter is remanded to the respondent no.2, Assistant Commissioner, Commercial Taxes, South Circle to pass an order in accordance with law after giving proper opportunity to the petitioner to be heard in the matter.

It is made clear that no further notice shall be required to be issued to the petitioner and the petitioner shall appear before the Assessing Officer with its authorized Officer competent to explain along with all the relevant documents on 29th April, 2016 at 11.00 A.M. upon which the respondent no. 2 shall consider and dispose of the matter in accordance with law.

The writ application is disposed of with the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

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