IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5470 of 2016

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M/s. Panasonic Sales & Services India Private Limited presently known as M/s. Panasonic India Private Limited having its registered office at 6th Floor, 'SPIC BUILDING' Annexe, No 88 Mount Road, Guindy, Chennai-600032 and local office at Road No. 25, Bank of India Building, S.K. Nagar, Patna- 800001 through its authorized officer and Branch Commercial Head Sri Rakesh Ranjan, Son of Late B.L. Das resident of B-41 Buddha Colony, Patna P.S.- Buddha Colony, District- Patna- 800001.

.... Petitioner

Versus

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

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli with M/S Vinay Mistry Samir Kumar, Prince Kr. Mishra, Advocates

For the Respondent/s : Mr. Anil Kumar Sinha, G.A. 9 with Mr. Pawan Kumar, AC to G.A. 9.

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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)

4 12-05-2016 Heard learned counsel for the petitioner and learned Government Advocate No.9 for the State.

The petitioner seeks quashing of the demand notice dated 16.3.2016 issued under Section 47 of the Bihar Value Added Tax Act, 2005 on the Banker's of the petitioner being Standard Chartered Bank, Bhagwati Dwarika Arcade, Exhibition Road, Patna to transfer an amount of Rs.1,19,23,070/- from the account of the petitioner and for further direction to the authorities to refrain from realizing the dues under the said notice till the disposal of the appeal by the JCCT(Appeal), Patna West Division, Patna.

The stand of the petitioner is that earlier for the same year 2010-11 the petitioner was assessed by the Assistant Commissioner, Commercial Taxes, Patliputra Circle, Patna on 28.11.2014 but without reference to the said order another assessment order had been passed on 30.6.2015 for the same period by the Assistant Commissioner, Commercial Taxes, Central Circle, Patna.

It is pointed out by learned counsel for the petitioner that earlier the files of the petitioner were before the Patna Central Circle but subsequently in the year 2013 on internal reorganization carried in the department, the files of the petitioner were transferred to Patliputra Circle and, accordingly, assessment for the year in question has been made in the Patliputra Circle. It is submitted by learned counsel that it is not permissible for the Assistant Commissioner, Commercial Taxes, Patna Central Circle to have again made the assessment for the same year since the case of the petitioner has been transferred to Patliputra Circle. It is further submitted that the petitioner was not aware about the assessment made by the Patna Central Circle and upon receipt of the demand notice in the month of August, 2015 the petitioner immediately filed a review application under Section 76 of the Bihar VAT Act on 21.8.2015 in which the petitioner pointed out to the respondent Assistant Commissioner, Commercial Taxes, Patna Central Circle with regard to the assessment having been made based on similar objection of AG Audit and the Departmental Audit and, accordingly, prayed for setting aside the demand notice issued pursuant to the assessment made by the Patna Central Circle. On no action being taken the petitioner preferred an appeal before the Joint Commissioner, Commercial Taxes (Appeal), Patna West Division on 18.9.2015. The petitioner also appeared before the JCCT (Appeal) on several dates but no preference was given to the petitioner as the lower court records had not been sent to him. While the appeal was pending a demand notice under Section 47 of the Act was issued to the petitioner on 16.3.2016.

Learned counsel for the petitioner submits that the action of the respondents is grossly unfair and it is a clear case of negligence coupled with an attempt to harass the petitioner. It is submitted that once a review application under Section 76 of the Bihar VAT Act was filed before the respondent authority, he ought to have immediately taken up the matter and disposed of the same. It is also submitted that even before the JCCT (Appeal) the matter could not be disposed of because of the inaction of the department in not sending the lower court records. It is further submitted by learned counsel for the petitioner that after the issuance of the demand notice dated 16.3.2016 under Section 47 of the Act the petitioner had filed an application before the Joint Commissioner, Commercial Taxes (Appeal) for stay of the same but the Joint Commissioner instead of taking up the matter urgently had directed that the matter shall be taken up on the scheduled date, i.e., 7.4.2016. Against that the petitioner approached this Court for obtaining an ad interim stay which was granted by the order dated 18.3.2016.

Under the said circumstances, it is urged that the assessment order passed by the Patna Central Circle is without jurisdiction. At the very least the authorities ought to have stayed their hands in not realizing the dues by issuing demand notice under Section 47 of the Act.

Learned Government Advocate No.9 has sought to defend the Department by stating that the petitioner did not appear before the authorities of the Patna Central Circle despite receipt of notice and that the action taken is on the basis of the Departmental Audit which the respondent is justified in taking such action.

In our view, the action of the respondents in issuing the notice under Section 47 of the Act in the given circumstances of the case appears to be wholly unjustified as such a situation has been brought essentially on account of their action although if the petitioner had been duly served the notice he ought to have appeared before the authorities of the Patna Central Circle and informed them about the correct matter.

However, considering the fact that the appeal of the petitioner is pending before the Joint Commissioner, Commercial Taxes (Appeal), Patna West Division, we are of the view that the respondents are not justified in the present matter in acting under Section 47 of the Act during the pendency of the appeal.

The writ application is, accordingly, allowed. The impugned demand notice dated 16.3.2016 is quashed. It is directed that no coercive action shall be taken against the petitioner until disposal of the appeal by the Joint Commissioner of Commercial Taxes (Appeals), Patna West Division.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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