IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8899 of 2016

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JMD Chain Stores Ltd., a Limited Company incorporated under the Companies Act having its registered office at 34/1 Canal South Road, Beliaghata, Kolkata-700015 and branch Office at 03, Basant Vihar Colony, P.O. G.P.O, P.S. Buddha Colony, District Patna through its authorized signatory and declared Manager, Gautam Kumar Singh, Son of late Chandra Bhushan Singh, Resident of Quarter No. 28, A.N. Sinha Institute, P.O. Bannkipur, P.S. Gandhi Maidan District Patna.

.... Petitioner/s

Versus

1. State of Bihar through the Commissioner of Commercial Taxes, Bihar Patna having its Office at Vikas Bhawan, Bailey Road, Patna.
2. Commercial Taxes Officer, Special Circle, Patna.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 8900 of 2016

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JMD Chain Stores Ltd., a Private Limited Company incorporated under the Companies Act having its registered office at 34/1 Canal South Road, Beliaghata, Kolkata-700015 and branch Office at 03, Basant Vihar Colony, P.O. G.P.O, P.S. Buddha Colony, District Patna through its authorized signatory and declared Manager, Gautam Kumar Singh, Son of late Chandra Bhushan Singh, Resident of Quarter No. 28, A.N. Sinha Institute, P.O. Bannkipur, P.S. Gandhi Maidan District Patna.

.... Petitioner/s

Versus

1. State of Bihar through the Commissioner of Commercial Taxes, Bihar Patna having its Office at Vikas Bhawan, Bailey Road, Patna.
2. Commercial Taxes Officer, Special Circle, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V. Pathy, Advocate
Mrs. Manju Jha, Advocate

For the Respondent/s : Mr. Vikash Kumar, S.C.-11

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 11-08-2016

Heard learned counsel for the parties.

2. The petitioner is a Company engaged in the business of retail sale of leather ware. The subject matter of challenge in C.W.J.C. No.8899 of 2016 pertains to Assessment Year 2010-2011 and C.W.J.C. No.8900 of 2016 pertains to Assessment Year 2011-2012.

3. Proceedings under Bihar Value Added Tax Act, 2005 (hereinafter referred to as "the VAT Act") were initiated against the petitioner and after giving opportunity of hearing, orders of assessment were passed on 29th of April, 2015 raising a demand under the Central Sales Tax Act, 1956 (hereinafter referred to as "CST Act").

4. The grievance of the petitioner is that the petitioner has affected Branch transfers between its different offices located other than in the State of Bihar, but since Form "F" has not been supplied by the other States, therefore, the levy of tax under Section 9(2) of the CST Act is not tenable and that the petitioner can prove the fact of transfer by other documents than only form "F".

5. The petitioner relies upon an order passed by this Court in C.W.J.C. No.4130 of 2015 (Apollo Tyres Ltd. Vs. The State of Bihar & Anr.) and an order passed by the Hon'ble Supreme Court in the case of Ambica Steels Ltd. vs. State of U.P. & Ors., (2009) 14 SCC 309.

6. As per the argument raised by the learned counsel for

the petitioner, Form 'F' was not supplied by the Tax Authorities located within the State of Jharkhand. On such Form being supplied, the petitioner shall be exempted from the liability of paying tax. But the question is that whether in the absence of Form 'F', the petitioner can be given credit on the basis of other documents of transaction which may support the transfer of the goods from State of Bihar to State of Jharkhand.

7. We do not find that the requirement of Form 'F' in terms of CST Act can be substituted with other documents in support of proof of transactions from one branch of the petitioner in the State of Bihar to the State of Jharkhand. If the law requires a particular thing to be done in a particular manner, it can be done in that manner alone. The requirement is that such transfer will be exempt from payment of tax on furnishing of Form 'F'. Therefore, unless the Form 'F' is furnished, the petitioner would not be entitled to any tax credit. The petitioner cannot rely upon other documents of transactions in support of its plea of Branch transfer.

8. The order of this Court in Apollo Tyres Limited (supra) is to the effect that the petitioner be given an opportunity to satisfy the respondents-authorities by producing the necessary Form in the matter at subsequent stages of the assessment proceedings. Such mandate of law is not an issue, as Form 'F' can be produced at any stage of assessment proceedings, but the fact is whether any other

document other than Form 'F' can be said to be relevant for giving credit to the petitioner. The said judgment does not deal with such issue.

9. The order in Ambica Steels Limited (supra) by the Supreme Court is wherein the Assessing Officer was directed to complete re-assessment proceedings after the assessee has deposited one crore rupees under protest. It is an order in the facts of the case and it cannot be said to lay down *ratio decidendi*.

10. Since, the requirement of submission of Form 'F' is a statutory requirement, therefore, in the absence of requirement of statute, the petitioner can not be given benefit on the basis of other documents.

11. In view thereof, we do not find any merit in both the writ applications. The same is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22.08.2016
Transmission Date	