IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13674 of 2015

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Sanjeet Kumar Son of Sri Yamuna Prasad, Resident of Village and Post Office - Gangachak, Police Station - Masaurhi, District - Patna.

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner - cum - Principal Secretary, Commercial Taxes, Bihar, having its office at Vikas Bhawan, Bailey Road, Patna.
3. The Deputy Commissioner, Commercial Taxes, West Patna Circle, Bihar, Patna.
4. The Bihar State Beverages Corporation Ltd., a Government of Bihar Udertaking, having its office at First Floor, Vidyut Bhawan - II, Jawahar Lal Nehru Marg, Sheikhpura, Patna - 800014 through its Managing Director.
5. The Assistant Commissioner, Commercial Taxes, West Patna Circle, Patna

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh Mr. Parijat Saurav
For the State	:	Mr Vikash Kumar, AC to PAAG
For BSBCL	:	Mr. Vikas Kumar Mr. Gunjesh Kumar

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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)

9 29-03-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The writ application was initially filed challenging the notices dated 16.6.2015 and 8.7.2015 for the periods 2014-15 and 2015-16 by which the petitioner was directed to explain as to why appropriate proceedings be not initiated against the petitioner for payment of VAT-3 amounts. Subsequently, during the pendency of the writ application by filing an interlocutory application the petitioner has challenged the demand notice dated 24.12.2015 for Rs. 20,66,037/- as also the assessment order dated 24.12.2015 under Section 31(1) of the Bihar VAT Act,2005 for the period 2015-16. The petitioner has also challenged the demand notice dated 24.12.2015 for Rs. 10,22,582/- for the period 2014-15 and the assessment order dated 24.12.2015 under Section 31(1) of the Bihar VAT Act.

It is the stand of learned counsel for the petitioner that pursuant to the notices issued, the petitioner had filed his reply stating the fact that the petitioner had received the stocks on the basis of MRP printed on the bottles of the Bihar State Beverages Corporation Limited and accordingly received much less price than the revised MRP list issued by the Beverages Corporation which showed the levy of VAT-3 also and thus the petitioner has failed to collect the VAT-3 from the customers. It was also prayed that the petitioner therefore be made free from the liability of VAT-3 for the period 2014-15 and further, for the period 2015-16 the VAT-3 should be determined on the basis of actual sale price. The petitioner further by his letter dated 30.09.2015 informed that he had filed the present writ application which was pending in the High Court and, therefore, prayed for the proceedings to be kept in abeyance till disposal of the writ application wherein the earlier notification levying VAT at every point of sale was also under challenge and pursuant to which the State Government had also withdrawn the subsequent notification. However, in the meantime the impugned orders have been passed.

Learned counsel for the petitioner submits that the impugned orders have been passed on the basis of the list of revised MRP supplied by the Beverages Corporation which is contrary to the law laid down by this Court under which the VAT could only be charged on the basis of actual sale price. It is submitted that the said facts had already been replied by the petitioner in response to the notices and if at all the respondents intended to pass an order in the matter then the petitioner ought to have been given opportunity of supplying the details of the sale, etc., made by him by filing proper return and on the basis of books of accounts of the petitioner, instead of proceeding in the matter and passing order under Section 31(1) of the Act.

Learned counsel for the State, on the other hand, submits that despite the service of notices the petitioner did not participate and did not produce the books of accounts maintained by him or any document in support of the tax liability and therefore, the ex parte order has been passed for the periods 2014-15 and 2015-16 on the basis of the data provided by the BSBCL.

It is evident from the pleadings of the parties that certain contentions have been raised by the petitioner regarding non-revision of the MRP on the bottles and in particular the reply of the petitioner that the sale had been made at a much lower price on the basis of old MRP printed on the bottles.

The impugned assessment order does not clearly indicate whether the revised MRP was printed on the bottles or not and the levy of VAT-3 has been made on the basis of actual sale price at which they have been sold and not the MRP as printed on the bottles, which cannot be the basis for levy of sales tax. The petitioner having made clear that the sale had been made at a lower price than the revised MRP then the respondents are obliged to pass order under Section 31(1) on the basis of actual sale price at which the goods had been sold.

In the aforesaid view of the matter, the impugned orders are quashed with a liberty to the respondents to proceed afresh in the matter. The petitioner shall file the return for the periods in question on or before 18th April, 2016 and thereafter appear before the respondent- Assistant Commissioner of Commercial Taxes on 2nd May, 2016 at 11.00 A.M. upon which he shall proceed in the matter in accordance with law.

The writ application is, accordingly, disposed of in terms of the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

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