IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.836 of 2016

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M/s. Godrej Consumer Product Ltd. a company Incorporated under the provisions of Companies Act, 1956 having its Branch office/Depot at Illahibagh, Beria, Patna Gaya Raod, Town & Dist-Patna through its Authorized Signatory Kundan Kumar son of Dhrub Kumar Resident of Loco Colony Qr No. 654-A, P.O.- Khagaul, P.S. Khagaul, District Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner of Commercial Taxes, Bihar,Patna.
2. The Principal Secretary cum Commissioner of Commercial Taxes, Bihar,Patna.
3. The Deputy Commissioner of Commercial Taxes-in-Charge, Special Cirlce, Patna.
4. The Assistant Commissioner of Commercial Taxes, Special Circle, Patna.

.... Respondents

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Appearance :
For the Petitioner/s : Mr. S.D.Sanjay, Sr.Advocate with
M/S B.K.Mishra & Priya Gupta, Advocates
For the Respondent/s : Mr. Vikash Kumar, AC to PAAG

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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)

2 30-01-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner is aggrieved by the order of reassessment dated 1.8.2015 and the consequential demand notice dated 8.8.2015 passed by the Assistant Commissioner, Commercial Taxes, Special Circle, Patna under Section 31(1) of the Bihar Value Added Tax Act, 2005 and for consequential relief.

The proceedings under Section 31(1) of the Act were initiated on the basis of an audit objection of the office of the Accountant General(Audit), Bihar, Patna dated 14.3.2014 in which it was brought to the notice of the Department that the petitioner not only makes sale of mosquito repellent but also mosquito device, which is a separate entry under the provisions of the Act and total sales of mosquito repellent may be presumably attributed to the sale of such device and tax should be leviable @ 13.5% as compared to 5% to mosquito repellent and therefore the dealer is liable to pay difference to tax along with interest besides penalty under Section 31(2) of the Act as mentioned in the said Memo of Accountant General. Thereafter notices were issued to the petitioner on 15.4.2014 under Section 33 of the Act fixing the date as 6.5.2014 for filing show cause. On 6.5.2014 the petitioner appeared through Mr. P.K.Mishra, Advocate and prayed for time. Thereupon the case was fixed for 21.5.2014, on which date the matter was not taken up, which is evident from the order-sheet of the case.

It is the stand of the petitioner that learned counsel for the petitioner did attend the office of the Deputy Commissioner of Commercial Taxes and filed the reply to the show cause, copy of which is annexed to the supplementary affidavit. Thereafter the matter was not taken up for a year and on 6.5.2015 the next date was fixed as 15.5.2015, on which date the petitioner did not appear. Subsequently by order dated 15.5.2015/13.6.2015 notices were directed to be issued and served by the Department upon the petitioner under Section 31(1) of the Act and further reminder was also issued on 23.6.2015 and upon the petitioner not appearing even on that date nor taking any step in the matter, the impugned order dated 1.8.2015 was passed. In the impugned order no reference is made to the reply to the initial show cause notice filed by the petitioner and the order has been passed against the petitioner.

It is submitted by learned counsel for the petitioner that even if the petitioner had not appeared pursuant to the subsequent notices issued the Assessing Officer ought to have considered the stand of the petitioner as given in the said reply to the show cause but that has not been done and the impugned order has been passed.

Learned counsel for the State, on the other hand, submits that no such petition was ever filed in the office of the Deputy Commissioner, Commercial Taxes, Special Circle, Patna and thus there was no occasion to consider the same.

Mr. P.K.Mishra, Advocate, who was appearing for the petitioner before the Assessing Officer and is present in Court assisting learned counsel for the petitioner in the matter, states that he had personally gone and filed the said reply to the show cause on 21.5.2014, on which date the matter was not taken up at all but no receipt was granted, as is the normal practice of the Department despite the fact that under the provisions of the Rule 61A a direction was issued on 21.6.2013 by the Commercial Taxes Department to all the Assessing, Appellate and Audit Officers of the Department to grant receipts in view of the fact that there has been repeated non-compliance regarding giving of receipts by the authorities of the Commercial Taxes Department with regard to the documents and petitions that are filed in the offices, which fact was also taken cognizance of by the Commercial Taxes Department and certain directions were given to its officers in this regard. This Court also had occasion to make observations in a recent case about such illegal action of the respondent authorities.

Further considering the fact that the order-sheet shows that the officer had not sat on 21.5.2014 which was the next date fixed, hence credence has to be given to the stand of the petitioner that the petitioner's counsel did attend the office of the Deputy Commissioner, Commercial Taxes on 21.5.2014 and had filed the application and thus the benefit for the same has to be given to the petitioner.

In the aforesaid view of the matter, the impugned order dated 1.8.2015 definitely suffers from the vice of denial of natural justice to the petitioner as proper opportunity of hearing was not given by at least considering the reply to the show cause that had been filed by the petitioner.

The writ application is, accordingly, allowed. The impugned order dated 1.8.2015 and the demand notice dated 8.8.2015 are both quashed and the matter is remanded to the Assistant Commissioner of Commercial Taxes, Special Circle, Patna to proceed again in accordance with law after giving an opportunity of hearing to the petitioner and considering the submissions made on behalf of the petitioner. No further notice shall be required to be issued to the petitioner, who shall appear before the Assessing Authority on 8^{th} March, 2016 at 11 A.M. along with any further reply and document and the Assessing Authority shall thereafter consider the same and decide the matter in accordance with law.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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