IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7167 of 2016

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United Spirits Ltd., a Company incorporated under the Companies Act, 1956 having its registerd office at UB Towers 24, Vittal Mallya Road, Bangalore and its Works at Hathidah, P.O. + P.S. Hathidah, District- Patna through its Senior Manager (Accounts), Rajesh Kumar, Son of Late Muneshwar Pandit, resident of Hathidah, P.O. + P.S. Hathidah, District-Patna.

.... Petitioner/s

Versus

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

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. D.V.Pathy
For the Respondent/s : Mr. Lalit Kishore- 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)

3 19-05-2016 I.A. No.4472 of 2016

The interlocutory application has been filed for quashing the circular letter dated 10.5.2016 passed by the Commissioner-cum-Principal Secretary, Commercial Taxes Department, Government of Bihar issued in supersession of the earlier notification dated 25.02.2016, which was challenged in the main writ application.

On a consideration of the facts and circumstances of the case, the prayer for amendment is allowed.

I.A. No.4472 of 2016 is, accordingly, disposed of.

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

The writ application has been filed seeking quashing of the order dated 11.03.2016 passed by the Deputy Commissioner of Commercial Taxes, Barh Circle, Barh under Section 8 of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993 read with Section 31 of the Bihar Value Added Tax Act, 2005, by which he has imposed entry tax liability of Rs.89,48,797/- for the period 2012-13.

Earlier also, the petitioner had approached this Court against an order of assessment for the same year, by which tax and penalty had been imposed and by order dated 31.07.2015, this Court had allowed the writ application and after quashing the assessment order dated 18.06.2015 and the consequential demand notice dated 19.06.2015 remanded the matter to the assessing officer to proceed afresh in accordance with law after complying with the principles of natural justice.

The further challenge in the writ petition is to quash the communication dated 25.02.2016 issued by the Commissioner of Commercial Taxes to all the different assessing authorities as also the communication dated 10.05.2016 in supersession of the same.

The petitioner, being a company engaged in the business of manufacture and sale of liquor, has filed its return for the period 2012-13 making according to it a full and true disclosure of import of scheduled goods into the State of Bihar and it paid entry tax on the same but not on import of plastic caps. An objection was made by the office of the CAG that entry tax has not been paid on plastic caps and accordingly, notices under Sections 33 and 31 of the Bihar Value Added Tax Act, 2005 were issued. The first order of assessment dated 18.06.2015 has been quashed by this Court and the matter was remanded by order dated 31.07.2015. Fresh assessment order has been passed on 11.03.2016, which is under challenge before us.

The main contention of learned counsel for the petitioner is that in view of the decision of this Court in the case of United Breweries Ltd. vs. State of Bihar and others: (2006) 143 STC 106, under which if the sales tax liability (now VAT liability) had already been paid with respect to the goods in question then even if a subsequent assessment is made on entry tax, the same ought to be adjusted with the VAT liability and there should not be a double imposition of tax in view of the provision of Section 3 sub-section (2) of the Entry Tax Act.

It is the stand of the petitioner that the demand notice has been issued to the petitioner without giving the benefit of the said adjustment contrary to what was decided in United Breweries case (supra) which has subsequently been reiterated by this Court by order dated 31.07.2015 passed in C.W.J.C. No.7623 of 2015: Shell

India Markets Pvt. Ltd.vs. State of Bihar and others and its analogous cases.

It is submitted by learned counsel for the petitioner that the same is not being done on account of the circular letter dated 25.02.2016 and the subsequent circular letter dated 10.05.2016 superseding the said circular letter issued by the Commissioner of Commercial Taxes. Thus, the petitioner has assailed the said circular letter also.

So far as the circular letter dated 25.02.2016 is concerned, we have no doubt that the purport of the said letter issued by the Commissioner of Commercial Taxes-cum-Principal Secretary, Commercial Taxes Department, Government of Bihar was to ignore the decision of this Court in the cases of United Breweries Ltd. (supra) Shell India Markets Pvt. Ltd.(supra) and other decisions in M/s. Premier Irrigation Adriteck Pvt. Ltd. vs. State of Bihar: 2014 (3) PLJR 81, stating that under the principles of jurisprudence any such decision, which is opposed to the provisions of law, does not have any binding effect. Such direction makes the officer liable for contempt and is not expected of an officer who heads an important Department of the Government. The judgment of the Court can be challenged in appeal or if so in a given case by praying for review of the decision. It is certainly not available to any executive officer or any one else in any matter to say that any decision of the court is not binding according to his/her reading of law. Probably, the Commissioner of Commercial Taxes herself realized the folly of issuing such circular and thereafter the subsequent circular dated 10.05.2016 has been issued which appears to be couched in a more temperate and moderate language but reiterates what was stated at the end of the previous circular, directing all the officers not only to take steps to ensure that the provisions of the Entry Tax Act are followed by all, with regard to which there can be no objection by any one, but also emphasizing that those who had not complied with the provisions of the Act by filing returns, etc. against them tax, penalty, interest etc. and process for recovery should be made. There is not even an attempt in the circular to say that the imposition at least of penalty or interest and the process of recovery should be in accordance with the decision of this Court in United Breweries case (supra) as followed and reiterated by the subsequent decisions of this Court.

We, therefore, direct that the said circular dated 10.05.2016, in so far as it attempts to ignore the decisions of this Court, has to be ignored and the officers concerned must read the direction given therein in accord with what has already been decided by this Court long back in the case of United Breweries (supra) and other recent decisions, with a warning to the

Commissioner of Commercial Taxes to be careful while dealing with the decisions of this Court in a personal capacity or while giving directions to the subordinates.

So far as the question of assessment of entry tax by the impugned order dated 11.03.2016 is concerned, we do not see any reason to interfere with the same as the petitioner has got statutory remedy available, if it is aggrieved by the said order. We, however, make it clear that the petitioner can claim a right of adjustment of the entry tax which has been assessed, subject to the provisions of entry tax providing for such adjustment. In this regard, it shall be open to the petitioner to raise a claim before the authorities of the Commercial Taxes Department under the Bihar VAT Act for adjustment of the entry tax liability against the VAT amounts already paid by the petitioner which shall be considered and disposed of by a speaking order in accordance with law by the respondent authorities.

The writ application is, accordingly, disposed of with the above observations and directions.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

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