IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7434 of 2017

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M/s Domestic Constructions Pvt. Ltd. a registered company having it's registered office at Ramdayalu, Muzaffarpur through it's director namely Kumar Kundan Son of Sri Sunil Kumar Resident of Ram Dayalu Nagar, Bhikhanpura, P.S. Kaji Muhammadpur, District- Muzafffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner Department of Commercial Taxes, New Secretariat, Bailey Road, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Tirhut Division, Muzaffarpur.
3. The Deputy Commissioner of Commercial Taxes, Commercial Taxes Circle (West), Muzaffarpur.
4. The Assistant Commissioner of Commercial Taxes, Commercial Taxes Circle (West), Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate

For the Respondent/s : Mr. Lalit Kishore- PAAG 1

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 14-07-2017

Challenging the order, Annexure-6 dated 10th of June, 2015 passed by the Appellate Authority exercising jurisdiction under Section 17(2) of the Bihar VAT Act, so far as it relates to disallowing the tax already deducted by the petitioner under Section 41 of the VAT Act, for which the statutory tax deduction Form under Form C-II was not submitted before the Assessing Authority but instead submitted before the Appellate Authority and the same was not considered, this appeal has been filed.

The petitioner was granted works contract and under Section 41 of the Bihar VAT Act, 2005 there is provision for advance recovery of tax for execution of such works contract and the tax so recovered is certified by issuance of a certificate under Form C-II. However, the mandate of the statutory provision is that along with the return to be filed Form C-2 has to be submitted and necessary deductions sought for. Admittedly, in this case when the return was filed, the Form C-II was not submitted along with the return purportedly on the ground that it was not issued by the employer while filing of the return. It seems that during the pendency of the assessment proceedings the Form C-II was issued but it was not submitted before the Assessing Officer on the ground that it was not issued. After the assessment orders were passed, the appeal was filed under Section 72 and in the pending appeal the certificate under Form C-2 was submitted before the Appellate Authority for the first time and the Appellate Authority having refused to consider the same, this writ petition challenging the aforesaid act of the Appellate Authority has been filed as the Appellate Authority refused consideration of the aforesaid document in Form C-II.

Having heard learned counsels for the parties at length, we find that under Section 75 of the Act, there is statutory provision permitting adducing of additional evidence by the petitioner at the appellate stage or the revisional stage and the certificate issued in question is issued under Rule 29 of the Rules of 2005. It is a case where the question is as to whether the petitioner tried to pay advance tax as required under Section 41 and the same statutory certificate under Form C-II was issued and its consideration by the Appellate Authority which is permissible under law which the Appellate Authority has refused to consider the same only on the ground that it was not produced before the Assessing Officer. We are of the considered view that when the law permits production of additional evidence at the stage of appeal and the certificate in Form C-II by way of additional evidence showing deduction of tax under Section 41 was produced, it was incumbent upon the Appellate Authority to consider the same and take a decision in the appeal after taking note of the deduction, if any, permissible on the advance tax. This having not done to that extent the matter is required to be remanded back to the Appellate Authority.

Accordingly, we allow this writ application in part and direct the Appellate Authority to take on record the Form submitted by the petitioner in Form C-II and proceed to complete the appeal proceedings taking note of the aforesaid.

It may be clarified that we have not interfered with any other part of the order of the Appellate Authority except that the

Appellate Authority has not considered Form C-II and consequential deductions claimed thereof.

The interim order relating to release of Bank Account to continue till decision of the appeal.

(Rajendra Menon, CJ)

S.Pandey/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.07.2017
Transmission Date	