IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8766 of 2014

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M/s Bhagwati Coke Industries Pvt. Ltd., a company incorporated having its Office at Industrial Estate, P.S. Aurangabad, District Aurangabad through one of its Director Shyam Kishore Prasad son of late Deo Nandan Prasad, Resident of Urmila Villa, Mohalla Surya Mandir Road, P.O.,P.S., & Town & District- Aurangabad

.... Petitioner/s

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, In-charge, Integrated Check Post, Dobhi, Gaya, District- Gaya
4. The Assistant Commissioner of Commercial Taxes, Integrated Check Post, Dobhi, Gaya, District- Gaya
5. The Commercial Taxes Officer, Integrated Check Post, Dobhi, Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S D Sanjay, Sr. Advocate
Ms. Priya Gupta, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 09-10-2017

Challenge in this writ petition is made to an order dated 09.01.2014 passed by the Assessing Officer imposing tax on the petitioner under the VAT Act by treating the price of coal to be of Rs.7000/- per Metric Ton instead of assessing the tax based on the actual sale price and the price of coal indicated in the Sale order @ Rs.1740/- per M.T., this petition has been filed.

Fact in brief which are relevant for deciding the issue in question goes to show that the petitioner is engaged in manufacture of soft coke/ special smokeless fuel from coal and for the said purpose is allowed linkage for assured supply by the Coal India Limited. As per the distribution policy of Coal India the petitioner entered into a Fuel Supply Agreement with the Central Coalfields Limited for supply of coal and the Central Coalfields Limited used to supply coal from various units and the petitioner used to transport the same to its establishment at Aurangabad.

Vide sale order Annexure-2 dated 21.11.2013 the petitioner had purchased 627 M.T. of coal @ Rs.1740/- per M.T. total price was fixed at Rs.13,85,757/-. The petitioner was supplied the coal from Dhori area of Central Coalfields Limited situated in the State of Jharkhand and after obtaining necessary documents like the sale letter, coal purchase agreement, the sale order Annexure-2, the tax invoice Annexure-3, payment of duty in the State of Jharkhand, vide Form –D under the VAT Act of the Government of Jharkhand entered the State of Bihar, at the check-post the vehicle was stopped and after enquiry it was found that in accordance with a circular issued by the Govt. of Bihar the minimum price of coal is fixed at Rs.7000/- per M.T. and the coal shown in the invoice and other documents were below the minimum price of coal indicated in the circular dated 18.07.2013 bearing No. 2570. Accordingly, on this count proceedings were initiated and the impugned action taken, after determining the price of coal as indicated in the Circular dated 18.07.2013, the petitioner filed the writ petition.

It was the case of the petitioner before us that when the petitioner purchased coal from the Central Coalfields Limited, a Govt. of India Undertaking and being subsidiary of Coal India Limited which is evident from Annexure-2, on the price determined at Rs.1740/- per M.T. and the petitioner based on the aforesaid price of coal paid the tax, then merely on the basis of an assumed minimum price indicated in the circular the impugned action is not sustainable. In support of the aforesaid contention, learned counsel invited our attention to the judgment of this Court in the case of M/s Nazir Saw Mill vs. State of Bihar CWJC No. 2223 of 2014 decided on 07.05.2014, wherein the petitioner, a timber merchant, used to procure sawn timbers from outside the State of Bihar at a particular price but was imposed tax under the Bihar VAT Act at a price fixed by the Commercial Tax Department as has been done in the present case, wherein this Court questioned similar act of the Department. Learned counsel argues that in this case once from the sale order and other documents placed on record price of the commodity, i.e. coal is shown as Rs. 1740/- per M.T. the impugned action taken for recovery of tax on the basis of an assumed price fixed under a circular of the department is unsustainable and the prayer is made to quash the same.

Learned counsel for the respondents refuted the aforesaid and argued that the respondents have fixed the price after proper technical evaluation by experts and, therefore, no interference into the matter is called for.

While hearing the matter at length on 08.08.2017 we made certain queries from the State of Bihar through the Department of Commercial Taxes and wanted them to indicate as to how, what circumstances and authority or law, prices of various commodities have been fixed in the circular Annexure-A dated 18th July, 2013. Based on the aforesaid queries made, a supplementary counter affidavit has been filed by the competent authority of the Commercial Taxes Department and in paragraphs -4, 5 and 6 of the aforesaid supplementary counter affidavit the following assertions are made:-

> *"4. That the writ petition by way of filing the Interlocutory application under reply has sought a declaration that the departmental letter no. 2570(Anu) dt. 18.7.2013 issued under the signature of Sri K N Rai, (JCCT) by which it has sought to fix the price of specified goods for the purpose of taxation is wholly without any authority of law. Further quashing of the impugned letter No.2570(Anu) dated 18.7.2013 has been sought for as the same has not been issued in exercise of any statutory power for the purpose of levy and imposition of tax or penalty.*

> *"5. That the answering respondents humbly state and submits that certain commodities(i.e. altogether Nine Items) were identified as tax evasion prove commodities and normally traders in unorganized section show all these goods/items at under valued rate with a intention to tax evasion.*
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> *"6. That it is further humbly stated that as a regulatory measure an appropriate minimum price have been determined with respect to the said identified nine commodities, and by letter No. 2580(Anu) dated 18.7.2013 M/s Tata Consultancy Service was directed to indicate minimum quoted rate of all identified nine items in the software and also make provision in Suvidha Software, so that if any Suvidha generated at Under valued rate, then at the time of its generation the system Display show "Alert" to the user that "goods rate is under valued, please quote proper Price". Otherwise this vehicle will go for its physical verification Zone."*

From the aforesaid it is clear that price fixed in the circular dated 18.07.2013 is only a modality for preparation of the software and to get an alert with regard to evasion of tax or duty and to facilitate function of the Suvidha Scheme Software and for enquiry purpose. In paragraph -9 of the supplementary counter affidavit thereafter the following assertions are made:-

> *"9. That the answering respondents humbly state and submit that the department vide its letter No. 2570*

(Anu) dt. 18.7.13 had never fixed the minimum price for all those nine mentioned commodities. It is further humbly stated that the department had only prescribed that if the transporter/traders carried the identified goods at lesser price than the quoted minimum price, in that circumstances the transporter/trader will come under the purview of "Physical verification" to establish the authenticity of the rate of the said commodity."

From the aforesaid it is clear that in a given case if the transporter or the trader carries the identified goods at lesser price than the quoted minimum price, i.e. as indicated in the circular then an enquiry is conducted and if authenticity of rate claimed by the assessee is established then the price or rate claimed by the assessee can be accepted for imposition of duty/tax. In this case, if we go through the assessment order in question we find that merely because the price quoted in the invoice and the document produced by the assessee were lesser than the minimum price fixed in the circular the amount of excess tax was imposed. On the contrary, it is not the case of the department that the petitioner did not produce any cogent evidence or material, on the contrary, available on record are the sale documents Annexure-4 series which shows that the sale order, the invoice, Form- J submitted to the Govt. of Jharkhand and ongoing documents filed as Annexure-2 series indicating the price of coal at

Rs.1740/- per Metric Ton and on this price tax was assessed by the State of Jharkhand. If these documents are perused it would be seen that these documents pertain to sale of 627 M.T. of coal by the Central Coalfields Limited, Purnea Range and the price for sale was Rs.1740/- per M.T. The sale is effected by a company owned by Govt. of India and based on the same the company itself has deducted tax as is evident from the tax invoice produced by the petitioner and even the Jharkhand Government has assessed duty based on the same price indicated in the sale order. That being so when the evidence as is available on record shows that the coal is purchased @ 1740 per M.T. merely because of a circular issued by the State of Bihar fixing the minimum price of certain commodity, which is not the foundation price or the price of the commodities but is only a price indicated on the basis of some exercise done to stop evasion of duty, in the absence of any material or cogent evidence available to show that the petitioner has tried to evade duty by under-pricing the price of coal the State Government cannot act in an arbitrary manner and impose duty based on such a circular. The circular may be used for the purpose of verification and curtailing evasion of duty and for checking under-valuation of goods in the check-post but merely on the basis of the circular without there being any specific evidence to show under price and ignoring the material available on record any action done for imposing tax in duty is unsustainable.

Accordingly, the writ petition is allowed. The impugned order dated 09.01.2014 passed by the Assessing Officer imposing tax on the basis of the price of coal determined as per the circular dated 18.07.2013 is quashed, tax be determined by treating the price of coal at Rs.1740/- per M.T. and the amount in excess, if any, calculated or paid be refunded back to the petitioner. As far as the prayer made for declaring the circular in question, i.e. Annexure-A dated 18th July, 2013 as *ultra vires* is concerned, now in the facts and circumstances of the case, particularly after coming into force of the GST Act, this prayer need not be considered.

The writ petition is accordingly allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12/10/2017
Transmission Date	N.A.