IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7528 of 2017

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M/s. Mehrotra Engineering Works Pvt. Ltd., a registered Company having its registered office at Bela Industrial Estate, Muzaffarpur through its one of the directors namely Sunil Mehrotra, S/o Dwarika Nath Mehrotra, resident of Juran Chapra Road No. 1. District Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of Commercial Taxes, Vikash Bhawan, Bailey Road, Patna.
2. The Principal Secretary Cum Commissioner, Department of Commercial Taxes, Vikash Bhawan, Bailey Road, Patna.
3. The Joint Commissioner of Commercial Taxes (Admin), Tirhut Division, Muzaffarpur.
4. The Deputy Commissioner of Commercial Taxes, Commercial Taxes Circle (East), Muzaffarpur.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 7529 of 2017

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M/s. Mehrotra Engineering Works Pvt. Ltd., a registered Company having its registered office at Bela Industrial Estate, Muzaffarpur through its one of the directors namely Sunil Mehrotra, S/o Dwarika Nath Mehrotra, resident of Juran Chapra Road No. 1. District Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of Commercial Taxes, Vikash Bhawan, Bailey Road, Patna.
2. The Principal Secretary Cum Commissioner, Department of Commercial Taxes, Vikash Bhawan, Bailey Road, Patna.
3. The Joint Commissioner of Commercial Taxes (Admin), Tirhut Division, Muzaffarpur.
4. The Deputy Commissioner of Commercial Taxes, Commercial Taxes Circle (East), Muzaffarpur.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 7530 of 2017

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M/s. Mehrotra Engineering Works Pvt. Ltd., a registered Company having its registered office at Bela Industrial Estate, Muzaffarpur through its one of the directors namely Sunil Mehrotra, S/o Dwarika Nath Mehrotra, resident of Juran Chapra Road No. 1. District Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of Commercial Taxes, Vikash Bhawan, Bailey Road, Patna.
2. The Principal Secretary Cum Commissioner, Department of Commercial Taxes, Vikash Bhawan, Bailey Road, Patna.
3. The Joint Commissioner of Commercial Taxes (Admin), Tirhut Division, Muzaffarpur.
4. The Deputy Commissioner of Commercial Taxes, Commercial Taxes Circle (East), Muzaffarpur.

.... Respondent/s

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Appearance :
(In CWJC No.7528 of 2017)
For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv
Mr. Mohit Agarwal, Adv
For the State : Mr. Lalit Kishore, Advocate General
Mr. Vikash Kumar, Advocate-SC-11
Mr. Sriram Krishna, Advocate, AC to SC-11
(In CWJC No.7529 of 2017)
For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv
Mr. Mohit Agarwal, Adv
For the State : Mr. Lalit Kishore, Advocate General
Mr. Vikash Kumar, Advocate-SC-11
Mr. Sriram Krishna, Advocate, AC to SC-11
(In CWJC No.7530 of 2017)
For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv
Mr. Mohit Agarwal, Adv
For the State : Mr. Lalit Kishore, Advocate General
Mr. Vikash Kumar, Advocate-SC-11
Mr. Sriram Krishna, Advocate, AC to 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: 18-08-2017

As common questions are involved in all these three cases and challenge are made to orders dated 14.10.2016 passed by the Competent Authority rejecting the one time settlement entered into in the matter, these writ petitions have been filed. Except for the fact that the assessment years are different, the facts are identical in all the three cases and, therefore, we proposes to deal with them by this common order.

The petitioners are registered dealers and assessment proceedings for the financial years 2009-10, 2010-11 and 2011-12, were in progress when the Bihar Settlement of Taxation Disputes Act, 2016 came into force. The aforesaid provisions for one time settlement was effective from 07.04.2016 up to 06.10.2016 as is evident from notification available on record. The petitioners applied for settlement of pending tax disputes under the aforesaid scheme and accordingly submitted an application in the statutory form on 14.09.2010, vide Annexure-3. Respondent No. 3 accordingly issued orders on 19.09.2016 raising demand for settlement for Rs. 88,122/- in C.W.J.C. No. 7528 of 2017, Rs. 62,413/- in C.W.J.C. No. 7530 of 2017 and Rs. 1,01,809/- in C.W.J.C. No. 7529 of 2017.

According to the petitioners, the petitioners deposited the settlement amount with respondent No. 3 vide Annexure-5 on 04.10.2016. The petitioners were awaiting further instructions in the matter from the respondents, but according to the petitioners, they were not granted proper opportunity as per the scheme to tender documents in support of the compliance and seek acceptance of the settlement, when all of a sudden, without notice to petitioners and without hearing them and without granting them opportunity, on 14.10.2016, the entire settlement was cancelled.

It is an admitted position that under the scheme in question, after the amount is deposited, the petitioners have to submit proof of deposit of the amount through Challan before the Competent Authority and also file a certificate indicating withdrawal of the revision petition and other proceedings initiated by them within seven days. It seems that the petitioners were granted an opportunity to do all these on 14.10.2016 and when the petitioners failed to appear before the Competent Authority on 14.10.2016, the impugned action has been taken, primarily, on account of the fact that after having deposited the amount the petitioners have not completed the statutory requirement of proving deposit of the amount and withdrawal of the cases. The petitioners on their own showing had only deposited the amount demanded on 19.09.2016 but could not withdraw the cases which were pending, as a consequence thereof, the impugned action has been taken. However, the facts remain that in the impugned order passed on 14.10.2016 action has been taken because the petitioners did not appear and submit proof of tendering of the document or did not take steps for withdrawal of the cases. According to the petitioners, the petitioners did not receive notice with regard to hearing on 14.10.2016 and even though they had deposited the amount well within the time, the respondents had not accepted the same which compelled them to file these writ petitions.

According to the respondents, in the return filed they accepted in para 30 that the amount in question has been deposited by the petitioners but the objection is that it has not been deposited under different heads. It has been deposited under miscellaneous head which is not permissible under the statute. That apart, the petitioners have not withdrawn the cases and therefore, respondents submit that the settlement cannot be accepted.

Having heard learned counsel for the parties, we are of the considered views that one time settlement was primarily to receive the tax dues and close the proceedings. Even though certain conditions were stipulated in the said settlement scheme, as far as the present writ petitions are concerned, two of the conditions are relevant. One is to deposit the amount determined by the authority concerned within the prescribed period i.e. on or before 06.10.2016 and in the present case it is an admitted position that this amount was deposited by the petitioners well before the prescribed period. That being so, it is a case where the tax dues determined under the settlement scheme was deposited by the petitioners, however, there being a technical breach in as much as it was deposited under a miscellaneous head and not under different heads i.e. tax, penalty, interest etc. However, respondents do not dispute the fact that the entire amount as required was deposited. Once the substantial compliance of the scheme has been done by the petitioners after determination of the settlement amount and the same was deposited by them within the time prescribed, it was a fit case where the discretion should have been exercised by the authority and the settlement accepted, directing the petitioners to withdraw all the cases within a particular period of time. In our considered view, the technical breach committed by the petitioners should not come in the way of denying the petitioners to the benefits of the settlement scheme and substantial compliance in the matter of deposit of the tax dues determined by the competent authority having been complied by the petitioners within the reasonable period. The intention of the settlement scheme is to seek revenue for the State and the State having already received the revenue and there being no loss of revenue to the Department, it is a fit case where the settlement scheme of the petitioners should be allowed and the respondents directed to pass appropriate orders accepting the settlement scheme and disposing of the matter in accordance with law.

The petitioners are directed withdraw all the cases filed and produce the documents along with the certified copy of the orders before the Appropriate Authority who shall pass orders in accordance with law.

With the aforesaid, we dispose of the matter.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25/08/2017
Transmission Date	NA