IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6603 of 2017

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M/s Instalaciones Inabensa S. A. having its place of business At Khagra, P.O., P.S. & District - Kishanganj, Bihar - 855107 through its Authorised representative Rajesh Kumar Jha, Son of Mr. Ramakant Jha, residing at B - 26, Panchsheel Enclave, P.O. Saket, South Delhi, P.S. - Hauz Khas, New Delhi,Pin: 110017.

.... Petitioner/s

Versus

1. Deputy Commissioner of Commercial Taxes, Kishanganj Circle, Kishanganj.
2. The Branch Manager, HSBC Bank, Main Branch New Delhi, (HSBC - 0110002), 3rd Floor, Birla Towers, 25, Barakhamba Road, New Delhi - 110001.
3. State of Bihar through the Secretary, Commercial Taxes, Govt. of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P. K. Shahi, Senior Advocate
Mr. Brisketu Sharan Pandey, Advocate
Mr. Nand Kishore, Advocate
Mr. Prince Kumar Mishra, Advocate
Mr. Akash Deep, Advocate

For the Respondent/s : Mr. Vikash Kumar-SC11

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 10-05-2017

Challenging orders of re-assessment dated 27.07.2015 and 20.08.2015 passed by the Deputy Commissioner of Commercial Taxes, Kishanganj Circle, Kishanganj in a proceeding held under Section 33 of the Bihar Value Added Tax Act, 2005, (hereinafter referred to as 'the Act') this writ petition has been filed under Articles 226 and 227 of the Constitution and challenge is made to the imposition of tax and penalty for two financial years 2011-12 and 2012-13. As far as financial year 2011-12 is concerned, only tax has been assessed, but for the financial year 2012-13, both tax and penalty have been assessed. For the assessment year 2011-12, the tax assessed is Rs.14,59,799/- and for the financial year 2012-13, the tax and penalty is at Rs.1,84,43,060/-.

2. As the petitioner has directly challenged the orders of reassessment without exhausting the remedy of appeal available of approaching JCCT (Appeal) Purnea Division, Purnea and taking note of the preliminary objection raised, the question of maintainability of this writ petition has to be taken note of and decided first.

3. The petitioner claims to be a Company incorporated under the laws of Spain having its principal place of business at Kishanganj Circle, Kishanganj, Bihar. It is the case of the petitioner that after the assessment orders were passed on 27^{th} of July, 2015 and 20^{th} of August, 2015, coercive steps for recovery under the special provisions, i.e. 47 of the Act has been initiated on 14.02.2017 and therefore, the challenge is made to this action also. Petitioner is engaged in the business of erection of transmission lines on work contract basis and imposition of liability is pertaining to execution of this works contract. However, it is the case of the petitioner that in the matter of re-assessment undertaken in this case, proper opportunity of hearing has not been granted to the petitioner. It is stated that after the petitioner received notices for the two financial years, being notice No.2658 and 2657 dated 1^{st} of July, 2015, the petitioner gave their written submission and wanted personal hearing, but this personal hearing has been denied

to them and, therefore, the imposition of liability without granting them opportunity of hearing is unsustainable. A prayer was also made to say that even the assessment orders were never served upon them and it is only after coercive steps were initiated 14th of February, 2017 under Section 47 that the petitioner was made aware of the orders passed under the re-assessment proceedings. Accordingly, primarily on the ground that the re-assessment orders have been passed under Section 33 of the Act without granting opportunity of hearing to the petitioner, the extra-ordinary jurisdiction of this Court under Articles 226 and 227 is being invoked and Sri P.K. Shahi, learned Senior Counsel appearing for the petitioner, after referring to Sections 32, 33, Rule 24 and 24A of the Bihar Value Added Tax Rules, 2005, (hereinafter referred to as 'the Rules') argued that the Rule mandates grant of opportunity of personal hearing and personal hearing as contemplated under Rule 24 has not been granted, the jurisdiction of the writ court should be invoked and the impugned action quashed as it is in violation of the principles of natural justice.

4. However, Sri Vikas Kumar, learned Standing Counsel-11 appearing for the Revenue, refuted the aforesaid contentions, took us through the original documents pertaining to the proceedings held and argued that the contentions of the petitioners are not correct. He tried to demonstrate from various documents and materials available on record that opportunity of hearing was granted, the petitioner participated in

the proceedings and therefore, there is no illegality in the same. He referred to the order-sheets of the proceedings by producing the original files and also referred to the photo copies of the same filed along with the counter affidavit to demonstrate before us that an opportunity of hearing was granted and therefore, the contentions of the petitioner are not correct. He relies upon a judgment of the Supreme Court in the case of **Dharampal Satyapal Limited Versus Deputy Commissioner of Central Excise, Gauhati and others**, [(2015) 8 SCC 519] to say that opportunity of hearing was granted and it is not a fit case where exercising the extra-ordinary jurisdiction available to this Court, the writ petition should be entertained.

5. Having heard learned counsel for the parties, we are of the considered view that primarily the grounds for assailing the impugned action that proper opportunity of hearing, particularly hearing contemplated under Rule 24, has not been granted. Rule 24 of the Rules is as under:-

> "**24**. **Hearing under section 32 and 33.-** (1) The notice of hearing in the matter of proceedings under 32 and 33 shall be in Form N-VI and from N-VII respectively.
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> (2) On the date fixed for hearing the person proceeded against shall be allowed to rebut the accusations leveled against him, but shall not ordinarily be allowed an adjournment. If an adjournment becomes necessary, the authority specified in rule 62 shall record reasons therefore.
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> (3) After giving a hearing, the authority referred to in sub-rule (2) shall record an order containing precisely and clearly the gist of accusations, the manner in which the person proceeded against was made aware of that, the reply, if any, furnished, and the decision thereon.
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> (4) A true copy of order shall be made over to the person proceeded against."

6. A perusal of the aforesaid Rule would go to show that the Rule only contemplates issuance of show cause notice and hearing by granting opportunity of submission of documents. There is nothing in this rule which suggests that a personal hearing as claimed by the petitioner has to be granted. If we analyze the procedure followed in this case, as is evident from not only from the counter affidavit but also from the original file produced before us, we find that after objections were raised by the Auditors as provided under Section 33 of the Act, show cause notice were issued to the petitioner on 01.07.2015 vide Notice No.2657 for the financial year 2012-13 and on 01.07.2015 again vide Notice No.2658 for the financial year 2011-12. Along with this notice, the submissions and other objections were also enclosed and the petitioner was directed to appear on 27.07.2015 at 11 A.M. in Kishanganj Circle. These notices have been issued to the petitioner in the e mail address and proof of service and delivery of this e mail are available on record. After both these notices were issued, records indicate that the petitioner appeared through their counsel one Sri Sunil Kumar on 27.07.2015 itself and filed their *vakalatnama* as is evident from Annexure-B at page 32 and 33. Thereafter, vide Annexure-C series, written objections were filed with reference to Notice No.2658 and separately with reference to Notice No.2657 dated 01.07.2015. Detailed objections have been raised not only for imposition of tax, but also for a penalty with regard to assessment financial year 2012-13.

Thereafter, detailed orders have been passed by the authorities concerned. The orders have been passed on 27.07.2015 itself and records indicate that notices for demand were issued to the petitioner, thereafter on 28.07.2015 and 01.09.2015. These were also served by e mail on the petitioners address and notices of proof of their service are also available.

7. Apart from the aforesaid document, the order-sheet of the proceedings filed as Annexure-I goes to show that on 27.07.2015 Sri Sunil Kumar, learned counsel, appeared on behalf of the petitioner in both the cases, submitted his objections and he was heard. That being so, we find that the contention of the petitioner that the petitioner was not granted opportunity of hearing seems to be incorrect. That apart, serious objection was raised by the learned Senior Counsel to say that the petitioner was not served with the orders of assessment. They only came to know about it when the action was taken under Section 47 of the Act. However, on going through the petitioner's own pleading from para 21 onwards it is seen that the petitioner make a submission about the demand and the tax liability imposed and it seems that the petitioner did receive some of the notices and communications, but they attribute certain reasons to say that because of the change in their office and because of some change of management and induction of new staff, the notices seem to have been misplaced or put under the carpet by some vested interest working in their office. In para 17, specific averments

are made in this regard which reads as under:

> " 17. That in November 2015, the petitioner, as internal restructuring exercise, started to lay off some of its employee. In this process, the concerned employee who were managing the day to day VAT related work and were authorised to communicate with the VAT Department at Kishanganj by way of submission and receiving notices and other documents in their official capacity, were also laid off. Amid this process of internal administrative restructuring, lot of documents handled by these employees could not be handed over to the succeeding employees. In certain cases, the petitioner verily believes that important documents like notices from the VAT Department were pushed under the carpet with malicious intentions."

8. From the aforesaid, it is clear that it is not a case where *per se* on the basis of the material available on record, a categorical finding can be recorded that the petitioner was not granted any opportunity of hearing and *ex parte* order was passed behind their back. On the contrary, the documents do indicate *prima facie* that opportunity of hearing was extended to the petitioner and the petitioner through their counsel did avail of this opportunity.

9. That being the position, we are of the considered view that this is not a fit case where exercising extra-ordinary jurisdiction of this Court, the matter could be interfered with right away in a petition under Article 226 of the Constitution, instead it is a case where petitioner should take recourse to the statutory remedy of appeal

available where all these issues can be sorted out on a decision taken.

10. Accordingly, upholding the objection raised by the respondents to say that statutory alternative remedy is available to the petitioner, we dismiss the petition. However, we observe that the findings recorded in this order to say that the principles of natural justice have been followed is only a provisional finding recorded for the purpose of satisfying as to whether a *prima facie* case showing apparent violation of the principles of natural justice is made out. The petitioners will have the right to raise this objection again in the appeal and the appellate authority can reconsider the matter without being prejudiced by any of the observations made in this order.

11. With the aforesaid, the writ petition stands dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Sunil/-

AFR/NAFR	N.A.F.R.
CAV DATE	N. A.
Uploading Date	16.05.2017
Transmission Date	