IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14352 of 2016

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1. Phooltas Harsco Rail Solutions Private Ltd., a company incorporated under the Companies Act having its office at Layak Bhawan, P.O. Boring Road, P.S. Buddha Colony, District Patna, Patna- 800001 through its Director Ritdhvaj Agarwala son of Rajendra Kumar Agarwala resident of Layak Bhawan, P.O. Boring Road, P.S.- Buddha Colony, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Patna. null null
2. Joint Commissioner of Commercial Taxes, Patna.
3. Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V. Pathy, Advocate
: Mrs. Manju Jha, Advocate
For the Respondent/s : Mr. Vikash Kumar, S.C.-11
: Mr. Anil Kumar Sinha, G.A.-1.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 19-09-2018

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ/order quashing and setting aside the impugned order dated 25.05.2016 passed by the respondent No.2, herein,-Joint Commissioner, Commercial Taxes, Patna for the period i.e. 2009-10 passed in Revision Case No. C.C.(s) 136 of 2012-13, in exercise of revisional powers under Section 74 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the 'VAT Act').

2. When it was pointed out by the learned counsel appearing on behalf of the respondents that against the impugned order passed by the revisional authority, the petitioner would have statutory remedy available by way of an appeal or revision before the Tribunal, learned counsel appearing on behalf of the petitioner has, vehemently, submitted that as the impugned order passed by respondent No.2-Joint Commissioner, passed in exercise of revisional powers under Section 74 of the Bihar Value Added Tax Act, 2005, is wholly without jurisdiction and therefore, it is requested to entertain the present petition, we shall first deal with the submission on behalf of the petitioner, whether the impugned order passed by the respondent No.2-Joint Commissioner, passed in exercise of revisional jurisdiction under Section 74 of the VAT Act, is wholly without jurisdiction as contended by the petitioner or not?

3. It is the case on behalf of the petitioner that Section 74 of the VAT Act confers power only upon the Commissioner to exercise the *suo motu* revisional powers. It is the case on behalf of the petitioner that it is the “Commissioner” as defined under Section 2(h) of the VAT Act, who shall have jurisdiction under authority to exercise the revisional jurisdiction under Section 74 of the VAT Act. It is the case on behalf of the petitioner that respondent No.2, herein,-Joint Commissioner cannot be said to be the

"Commissioner" as defined under Section 2(h) of the VAT Act, 2005, therefore the impugned order passed by respondent No.2 herein,-Joint Commissioner in exercise of the revisional jurisdiction under Section 74 of the VAT Act, is wholly without jurisdiction and authority under the law.

4. Mr. D.Y. Pathy, learned counsel appearing on behalf of the petitioner has further submitted that in the present case, no notification has been issued under the Bihar Value Added Tax Act, 2005 as required under Section 2(h) of the VAT Act, authorizing the respondent No.2, herein- Joint Commissioner, to act as a "Commissioner". It is further submitted that therefore, the impugned order passed by the respondent No.2, herein,-Joint Commissioner under Section 74 of the VAT Act, is wholly without jurisdiction and authority under the law.

5. Per contra, learned counsel appearing on behalf of the respondent-State has relied upon the Government Notification dated 28.12.1978 passed in exercise of the powers conferred by Clause (d) of Section 2 of the Bihar Sales Tax Second Ordinance, 1978 appointing/conferring the powers upon the Joint Commissioner to exercise the revisional jurisdiction. He has also relied upon the subsequent notification dated 28.06.1986 issued in exercise of the powers conferred by Clause (c) of Section 2 of the Bihar Finance

Act, 1981 conferring the powers and duties of the "Commissioner" under the Bihar Finance Act, 1981 and Bihar Sales Tax Rules, 1983 upon the Joint Commissioner of Commercial Taxes. Relying upon Section 94(3) of the VAT Act, 2005, it is submitted that the said notifications are deemed to have been published, granted and conferred under the VAT Act, 2005. It is further submitted that therefore, the exercise of powers under Section 74 of the VAT Act by the respondent No.2-Joint Commissioner cannot be said to be illegal and/or without jurisdiction and/or without authority under the law as contended on behalf of the petitioner.

6. Having heard learned counsel appearing on behalf of the respective parties and considering the notifications issued under the erstwhile Act, Bihar Sales Tax Act/ Bihar Finance Act dated 28.12.1978 and 28.06.1986, respectively, referred to hereinabove, produced along with the supplementary counter filed on behalf of the respondents and considering sub-section 3 of Section 94 of the Bihar Value Added Tax Act, 2005, it appears that the aforesaid two notifications are deemed to have been made, published, granted, conferred and/or done under the Bihar Value Added Tax, 2005 as the same are neither modified, superseded, cancelled under the Bihar Value Added Tax, 2005 and the same are not inconsistent with any of the provisions under the VAT Act, 2005. By the aforesaid two

notifications, the Joint Commissioner of the Commercial Taxes (Administration) in the office of the concerned division are conferred with the revisional powers and therefore, it cannot be said that the impugned order passed by the Joint Commissioner-respondent No.2, herein, can be said to be in any way wholly without jurisdiction and without authority under the law as contended on behalf of the petitioner. The submission on behalf of the petitioner that the impugned order passed by the respondent No.2, herein,- Joint Commissioner, is wholly without jurisdiction and/or without authority under the law has no substance and the same is, hereby, rejected.

6.1. So far as the impugned order on merits is concerned, it is not in dispute that against the impugned order, the petitioner would have statutory remedy available by way of an appeal or revision before the first Appellate Authority and/or learned Tribunal. It is the case on behalf of the petitioner that the impugned order is just contrary to the decision of this Court. However, the aforesaid aspects and the legality and validity of the impugned order on merits are required to be considered by the learned appropriate Appellate Authority and/or learned Tribunal who shall deal with the submission on merits both on factual aspect as well as legal aspect. Therefore, keeping all the questions open to be considered by the first Appellant Authority and/or learned Tribunal, as the petitioner would have statutory remedy available under the Act 2005, the petitioner is delegated to approach the first Appellate Authority and thereafter if aggrieved to the learned Tribunal. If an appeal is preferred within a period of three weeks from today, the same be considered in accordance with law, however, without raising the issue with respect to limitation.

7. With this, the present writ petition stands disposed of.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Brajesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	