IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2743 of 2018

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1. M/s Baba Project Pvt. Ltd., N.T.P.C. Contractor Colony, Kahalgaon, Bhagalpur through its Site In-charge Jitendra Kumar, Son of Jeewan Lal Sharma, Resident of Saket Puri, East of Bahadurpur, Near Bazar Samiti, P.S.- Bahadurpur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Commissioner, Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Joint Commissioner, Commercial Taxes, (Administration) Bhagalpur Circle, Bhagalpur.
5. The Joint Commissioner, Commercial Taxes, (Appeal) Bhagalpur Circle, Bhagalpur.
6. The Deputy Commissioner, Commercial Taxes, Bhagalpur Circle, Bhagalpur.

.... Respondent/s

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Appearance:

For the Petitioner/s : Ms. Sushmita Mishra, Advocate.
For the Respondent/s : Mr. Lalit Kishore, A.G.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 28-06-2018

The present writ application has been preferred for quashing the order dated 27.12.2017 passed by the Joint

Commissioner, Commercial Taxes (Administration), Bhagalpur Circle (respondent No.4) by which he has dismissed the Miscellaneous Revision filed by the petitioner under Section 73(A) of the Bihar Value Added Tax Act, 2005 (in short 'Bihar VAT Act, 2005'). Respondent No.4 has further dismissed the revision application affirming the order passed by the Deputy Commissioner, Commercial Taxes (respondent No. 6).

It appears from the facts narrated in the writ application that the petitioner submitted an application for obtaining statutory Form 'C' under Section 8(1)(b) of the Central Sales Tax Act, 1956 (for short- The CST Act) for the 3rd quarter of 2015-2016 and for 1st, 2nd, 3rd and 4th quarter of 2016-2017 but the request of the petitioner was rejected by respondent No.6, allegedly without giving any opportunity to the petitioner to be heard.

It is the case of the petitioner that in the rejection order as contained in Annexure-2 only two grounds were mentioned for rejection for issuance of statutory Form 'C' of the petitioner; (i) return not filed and (ii) admitted tax not paid. The petitioner submits that from the order dated 27.12.2017 (Annexure-1) to the writ application it would appear that the petitioner has admittedly filed the return and admitted tax has also been paid but while passing Annexure-'1' the respondent authority has taken a view that with regard to the TDS amount as the petitioner had not complied with the condition enumerated in Notification No. 6259 dated 06.09.2012.

Learned counsel for the petitioner submits that from the Notification No. 6259 dated 06.09.2012 It would appear that the adjustment of TDS is not even whispered in the said notification and further that it was not the case of the respondent and cannot be a ground for withholding the statutory Form 'C'.

Learned counsel appearing on behalf of the petitioner submits that the respondent authorities particularly respondent No.4 has only tried to make out a new case for affirming the status report/ order dated 09.10.2017 while passing impugned order as contained in Annexure-'1' to the writ application.

On the other hand, learned counsel representing the State submits that for issuance of Form 'C' under the Central Sales Tax Act certain guidelines/instructions has been laid down vide Notification No. 6259 of 06.09.2012 (Annexure-9 to the writ application). It is submitted that in the present case the petitioner has filed the application online with the concerned circle for issuance of CST Form 'C' but during the investigation made by the Deputy Commissioner (In-charge), Commercial Taxes, Bhagalpur Circle, it was found that the petitioner has neither deposited admitted due on entry tax, nor deposited the payable VAT amount. Simultaneously, ET-V was not also filed. It is submitted that it was obligatory for the trader/contractor to fulfill the condition as laid down the Para-3 of the Notification for getting CST Form 'C'. In the present case the petitioner has not fulfilled the conditions mentioned in Para-3 of such notification. It is in these circumstances when the petitioner come this Court in CWJC No. 15160 of 2017, the said writ petition was dismissed with a direction to the petitioner to take recourse to the statutory remedy available under Section 3 of the Bihar Vat Act, 2005.

It is further submitted that when the petitioner filed a revision application, the Joint Commissioner (Administration) has dismissed the revision application when it was found that the web copy of the information provides under payment details of entry tax for the period 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017 as well as under VAT Act for the period of 01.04.2016 to 31.03.2017 reveals "No Data Found", CST form 'C' has not been issued because of the non-compliance.

Having heard learned counsel for the parties and upon perusal of the records, we find that the Joint Commissioner (Administration) while considering the revision application of the petitioner has taken note of the fact that the petitioner has filed ET-V, however, he has found certain discrepancies in the matter of adjustments of tax liabilities on account of Tax Deducted at Source (TDS). The Joint Commissioner (Administration) has pointed out the nature of defects and discrepancies found in the statement RT-III (PART-IV) and has directed for an enquiry at the circle stage and it has been held that the manner in which claims have been made by the petitioner in the statement may be examined only at circle stage.

we, therefore, take a view that the petitioner is obliged to comply with the conditions mentioned in the Notification dated 16.09.2012 and the Circle Office, Bhagalpur should complete the enquiry as envisaged in the order of the Joint Commissioner (Administration) and complete the same within a period of one month from the date of receipt/production of a copy of this order. It goes without saying that in course of enquiry either on its' own or on the request of the petitioner as the case may be an opportunity of hearing be given to the petitioner to satisfy the respondent authorities with respect to correctness of the return and compliance with the conditions of the Notification dated 16.09.2012.

The Deputy Commissioner, Commercial Taxes, Bhagalpur (respondent No. 6) is directed to act in the light of the observations of the Joint Commissioner (Administration) as contained in Annexure-'1' to the writ application vide memo No.427 dated 27.12.2017 and pass appropriate order within the aforementioned period after giving an opportunity to the petitioner, as stated above. In case the petitioner feels aggrieved by the order of the Deputy Commissioner (respondent No. 6), he will be at liberty to move before appropriate forum/court as the case may be in accordance with law.

The writ application is dismissed with the aforesaid observations.

(Rajendra Menon, C.J.)

(Rajeev Ranjan Prasad, J)

Sanjeev/Mukesh

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.07.2018
Transmission Date	N/A