IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.622 of 2014

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M/s Bhura Jute Supply, a proprietorship firm having it's place of business At & P.O. Araria- 854311, District- Araria (Bihar) through it's proprietor Bhairudan Bhura son of Late Ujainmal Bhura

.... Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Commercial Taxes Department, Bihar, Patna
2. The Joint Commissioner of Commercial Taxes (Appeals), Purnea Division, Purnea
3. The Commercial Taxes Officer, Forbesganj Circle, Forbesganj, District Araria

.... Respondent/s

with

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Miscellaneous Appeal No. 623 of 2014

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M/s Bhura Jute Supply, a proprietorship firm having it's place of business At & P.O. Araria- 854311, District- Araria (Bihar) through it's proprietor Bhairudan Bhura son of Late Ujainmal Bhura

.... Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Commercial Taxes Department, Bihar, Patna
2. The Joint Commissioner of Commercial Taxes (Appeals), Purnea Division, Purnea
3. The Commercial Taxes Officer, Forbesganj Circle, Forbesganj, District Araria

.... Respondent/s

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Appearance :

(In MA No.622 of 2014)
For the Appellant/s : Mr. Ramesh Kumar Agrawal
For the Respondent/s : Mr.
(In MA No.623 of 2014)
For the Appellant/s : Mr. Ramesh Kumar Agrawal
For the Respondent/s : Mr.

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 27-06-2018

The two Miscellaneous Appeals have been preferred under

Section 79 of the Bihar Value Added Tax Act, 2005, for setting aside the common judgment dated 23.06.2014 passed by the Commercial Taxes Tribunal, (hereinafter referred to as "the Tribunal") Bihar, Patna, in Revision Case No.PN-02/2011 for the period 2003-04 and Revision Case No.PN-03/2011 for the period 2004-05 respectively. By the impugned judgment the Tribunal has been pleased to affirm the first appellate order dated 08.06.2010 passed by the respondent Joint Commissioner of Commercial Taxes (Appeals), Purnea, and the reassessment order dated 19.06.2009 passed by the respondent Commercial Taxes Officer, Forbesganj.

2. The Commercial Taxes Officer had in course of reassessment enhanced/doubled the rate of Central Tax from 3% to 6% on the sale of 'jute' made in course of interstate trade and commerce for non-production of Form-C.

3. The grievance of the appellant is that by virtue of the notification as contained in S.O. 805 dated 28.06.1986 issued under Section 8 (5) of the Central Sales Tax Act, 1956, the appellant would be entitled to get the benefit of the said notification in respect of these 'jute' sale without Form-C. It is the stand of the appellant that in view of this aforesaid notification no Form-C is required. It is submitted that imposition of CST @ 6% under Section 8 (2) of the CST Act and demand of Rs.9,61,413.42/- is only illegal, arbitrary and bad in law.

4. We have gone through the impugned judgment of the

Tribunal. The Tribunal framed the following two issues:-

> *"(a)Whether S.O.805 dated 28.06.1986 issued under Sub.Sect.(5) of Sec.8 of CST Act will remain unaffected by amendment in C.S.T Act w.e.f.11.05.2002 in assessment /reassessment for the year 2003-04 and 2004-05 which makes production of Form 'C' mandatory for availing concessional rate of C.S.T under Sec.8(5) of C.S.T.Act?*
>
> *(b)Whether audit objection by CAG will be treated as 'information' for the purpose of proceeding for reassessment?*

5. The Tribunal has taken into consideration the position prior to amendment in C.S.T Act w.e.f from 11.05.2002 and the effect of the amendment with effect from 11.05.2002. The Tribunal found that the amendment in C.S.T Act puts the condition "on the fulfillment of the requirements laid down in Sub-section (4) by the dealer" for availing concessional rate of C.S.T. under Section 8 (5) of the C.S.T. Act. The Tribunal held that the amendment does not deny the concessional rate of tax on 'jute' @ 3% as mentioned in S.O.805 dated 28.06.1986, but it only adds a condition of producing Form 'C', which the petitioner in the present case could not produce at the time of reassessment. The reassessment order passed by the Assessing Officer has been held to be in conformity with the amendment of C.S.T. Act, in Section 8 (5).

6. On the second issue also the Tribunal found that on the face of the legal provisions existing in Section 8 (5) of the C.S.T. Act

the legal omissions in the assessment orders could have been raised at any stage and the primary object of CAG Audit Team is to find out the factual omissions in the assessment orders and in the present case the CAG Audit Team has simply pointed out the under assessment in context of amendment in Section 8 (5) of C.S.T. Act w.e.f., 11.05.2002.

7. On consideration, we find no error in the interpretation of Section 8 (5) of the C.S.T. Act, 1956 amendment w.e.f 11.05.2002.

8. The consistent views taken by the Taxing authorities have been rightly upheld by the learned Tribunal in view of the existing legal position and we do not find any reason to differ with the view taken by the learned Tribunal.

9. These Miscellaneous Appeals are devoid of merit and are, accordingly, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	
CAV DATE	
Uploading Date	10.07.2018
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