IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.2957 of 2015
IN
Civil Writ Jurisdiction Case No. 18285 of 2014

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M/s Milith Karv Engineering & Trading Pvt. Ltd. having its local office at Harnout, Biharsharif, Distt. Nalanda through its authorized representative and signatory Shri Shyam Lal Khandelwal son of Lt. Shri Jagdish Prasad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shri Ravi Mittal, S/o not known, the Commissioner of Finance, State of Bihar, Patna.
3. Shri Sujata Chaturvedi S/o not known, the Commissioner of Commercial Taxes, New Secretariat.
4. Sri Mohan Nath Mishra S/o not known, the Deputy Commissioner, Patliputra Circle, Patna.
5. Shri Jyotindra Kumar, S/o not known, the Deputy Commissioner, North Circle, Patna.
6. Shri Navin Kumar, S/o not known, the Asstt. Commissioner, Biharsharif Circle, Nalanda.
7. Shri Vijay Kumar Azad, S/o not known, the Joint Commissioner, Commissioner Commercial taxes, Administration, Patna.
8. Shri Ajitabh Mishra, Deputy Commissioner Biharsharif, Nalanda.
9. Shri Raj Kumar, Joint Commissioner Commercial Taxes Administration, East West Division, Patna.

.... Respondent/s

With

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Miscellaneous Jurisdiction Case No. 2695 of 2015
IN
Civil Writ Jurisdiction Case No. 18268 of 2014

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M/s Milith Karv Engineering & Trading Pvt. Ltd. having its local office at Harnout, Biharsharif, Distt. Nalanda through its authorized representative and signatory Shri Shyam Lal Khandelwal son of Lt. Shri Jagdish Prasad.

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5. Shri Jyotindra Kumar, S/o not known, the Deputy Commissioner, North Circle, Patna.
6. Shri Navin Kumar, S/o not known, the Asstt. Commissioner, Biharsharif Circle, Nalanda.
7. Shri Vijay Kumar Azad, S/o not known, the Joint Commissioner, Commissioner

Commercial taxes, Administration, Patna.
8. Shri Abhijit Mishra, Deputy Commissioner Biharsharif, Nalanda.
9. Shri Raj Kumar, Joint Commissioner Commercial Taxes, Administration, East West Division, Patna.

.... Respondent/s

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Appearance :
(In MJC No.2957 of 2015)
For the Petitioner/s : Mr. Rakesh Kumar Singh, Adv.
For the Respondent/s : Mr. Vikas Kumar, SC-11.
(In MJC No.2695 of 2015)
For the Petitioner/s : Mr. Rakesh Kumar Singh, Adv.
For the Respondent/s : Mr. Vikas Kumar, SC-11.
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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)
Date: 10-09-2018

Heard Mr. Rakesh Kumar Singh, learned counsel appearing for the petitioner and Mr. Vikas Kumar, learned Standing Counsel No.11 for the State.

The two contempt applications arise from the judgment and order passed by this Court in a batch of writ petitions arising from CWJC No.17690 of 2014 and analogous cases. While MJC No.2957 of 2015 arises from the order passed in CWJC No.18285 of 2014, MJC No.2695 of 2015 arises from CWJC No.18268 of 2014.

It is because the refund application so filed by the petitioner was rejected by the Deputy Commissioner, Commercial Taxes, Biharsharif Circle, Nalanda in relation to the Financial Year 2006-07, 2007-08, 2008-09 passed on 29.12.2014 that feeling aggrieved the petitioner approached this Court through the writ petitions in question which were filed for the different financial years.

The Division Bench taking note of the grievance raised, the statutory position reflecting from the provisions of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the 'Act' and the 'Rules' framed thereunder as well as the jurisdiction vested in the Deputy commissioner, to entertain an application seeking refund of an amount exceeding Rs.50,000/-, disposed of the writ petition in the following terms:

> "From a consideration of Rule 43 of the Bihar Value Added Tax, 2005, it is evident that in case the amount of refund exceeds to Rs.50,000/-, the application for refund has to be made before the Joint Commissioner and not before any lower authority. In the present matter, the petitioners have admittedly not filed their applications before the Joint Commissioner. In the said circumstances, the entire proceedings before the Deputy Commissioner, including the order dated 29.12.2014 passed by him are without jurisdiction. The same are, accordingly, quashed.
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> The Deputy Commissioner of Commercial Taxes, Biharsharif Circle, Nalanda, Respondent no.8 is directed to return the application and documents filed by the petitioners before him to the petitioners forthwith on production of a copy of this order who shall file the same before the Joint Commissioner of Commercial Taxes with whatever rectification as may be required. The Joint Commissioner, Commercial Taxes, being the prescribed authority, shall consider the claims of the petitioners and dispose of the same within a period of two months from the presentation of the applications by the petitioners before him.
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> The writ petitions are, accordingly disposed of with the aforesaid directions and observations."

The onus was thus cast upon the Joint Commissioner, Commercial Taxes to consider the claim of the petitioner for refund and pass appropriate order thereon.

It is following the direction of this Court that an application was filed by the petitioner seeking implementation thereof. A notice was issued to the petitioner dated 18.05.2015 in relation to the refund claim for the years 2006-07 and 2007-08, copies of which are enclosed at Annexure 6 to the respective contempt applications. The petitioner was directed to furnish certain documents in support of his claim for refund, in reference to Rule 29 of the 'Rules' framed under the 'Act' to enable the Joint Commissioner, Commercial Taxes to pass final order thereon.

It is not in dispute that the petitioner failed to respond to the notice. On query made to learned counsel appearing for the petitioner, he refers to the application filed by the petitioner at Annexure 4 which is a response to an earlier notice dated 17.04.2015 and not the notice(s) in question.

Be that as it may, it is in purported compliance of the order passed by this Court and exercising best judgment assessment that the Joint Commissioner, Commercial Taxes has proceeded to pass orders on the refund application and whereby, while a refund to the tune of Rs.8,98,257.18 has been found refundable to the petitioner for the period 2006-07, a refund of Rs.6,17,818.00/- is allowed for the period 2007-08. The orders are placed at Annexure 'B' and 'F' respectively to supplementary show cause filed on behalf of opposite party nos.2 and 9 filed in MJC No.2695 of 2015.

The petitioner disputes the quantum of refund as according to him, he is entitled to a higher refund. According to Mr. Rakesh Kumar Singh, learned counsel appearing for the petitioner, the Joint Commissioner, Commercial Taxes has misappreciated the statutory position as reflecting from the C-II Form issued by the Railway which would explain the quantum of refund to which the petitioner is entitled for respective years.

Mr. Singh has his reasons to question the quantum but then the failure of the petitioner to respond to the notice(s) issued by the Joint Commissioner, Commercial Taxes enclosed at Annexure 6 to the respective contempt applications would not allow us to proceed any further in contempt because in our opinion the onus is discharged by the Joint Commissioner, Commercial Taxes as per his wisdom and the amount found admissible for refund to the petitioner has been allowed. May be this does not satisfy the petitioner but then to dispute the quantum of refund allowed, the remedy would lie elsewhere, in a duly constituted proceeding and not in a contempt jurisdiction because there is no default on the part of the opposite parties in discharging their obligation.

While thus giving liberty to the petitioner to question the order passed by the Joint Commissioner, Commercial Taxes on its quantum in a duly constituted proceeding before an appropriate forum we find no reason to keep these contempt applications pending which are accordingly disposed of with the liberty aforementioned.

(Jyoti Saran, J)

(Nilu Agrawal, J)

SKPathak/Anjula

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20-09-2018
Transmission Date	NA