IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3215 of 2018

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M/s Hanumanjee Modern Rice Mill, Village- Khatiba, P.O.- Itadhi, District- Buxar, through one of its partner Sri Surendra Kumar Pathak @ Surendra Pathak, Son of Late Kashi Nath Pathak, resident of Village- Siktowna, P.S.- Itadhi, P.O.- Atrouna, District- Buxar

... ... Petitioner/s

Versus

1. The State Of Bihar, through the Commissioner, Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna
2. The Joint Commissioner, Commercial Taxes, Vikas Bhawan, Bailey Road, Patna
3. The Assistant Commissioner, Commercial Taxes, Buxar Circle, Buxar, District- Buxar

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Pathak, Adv.
For the Respondent/s : Mr. LALIT KISHORE -AG

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-03-2018

Challenging an order dated 28.8.2017 passed by the Assistant Commissioner, Commercial Taxes, Buxar Circle, Buxar, rejecting an application filed by the petitioner for settlement of his dispute in accordance to the provisions of Bihar Settlement of Taxation Disputes Act, 2016, (hereinafter referred to as Act of 2016), this writ petition has been filed under Article 226 of the Constitution and the main ground canvassed before us is that under the Act of 2016, it is the Joint Commissioner of Commercial Taxes who is authorized to deal with such an application and the Assistant Commissioner, Commercial Taxes has no authority under the law to reject the application.

It was argued by Shri Vikas Kumar, learned Counsel for the respondents that the application filed by the petitioner was not in the prescribed Form SET- 1.

Having heard learned counsel for the parties, we find that the Act of 2016 was implemented and enforced for a period of three months from the date of its notification for settlement of certain taxation dispute and the prescribed authorities for dealing with the applications for settlement of disputes are the ones indicated in Section 2(j) of the Act. Sub-section (iii) of Section 2(j) reads as under:

(j) "prescribed authority", for the purposes of this Act, means:

(i) In respect of any appeal pending, the Joint Commissioner of Commercial Taxes (Appeal) or the Deputy Commissioner of Commercial Taxes (Appeal), before whom appeal is pending;

(ii) Dispute pending before the Commissioner of Commercial Taxes or the Tribunal or the High Court or the Supreme court in which the disputed amount is more than rupees One Crore, the Commissioner of Commercial Taxes.

(iii) Dispute pending before the Commissioner of Commercial Taxes or the Tribunal or the High Court or the Supreme Court in which the disputed amount is upto rupees One Crore, the concerned Joint Commissioner of Commercial Taxes (Administration), under whom jurisdiction the party is registered or the order of disputed amount has been passed.

(iv) In respect of any other disputed cases pending before the Joint Commissioner of Commercial Taxes (Administration), the Joint Commissioner of Commercial Taxes (Administration)

Meaning thereby that disputes upto Rs.1,00,00,000/- (one crore), which are pending before the various Courts and authorities, as are indicated therein, are to be decided by the Joint Commissioner, Commercial Taxes (Administration). So far as the petitioner's application is concerned, the quantum of tax is less than Rs. 1,00,00,000/- and the dispute was pending before the Commercial Taxes Tribunal and, therefore, in view of the provisions of Sub-section (iii) of Section 2(j), the jurisdiction to deal with the application of the petitioner for settlement was with the Joint Commissioner, Commercial Taxes (Administration).

Records indicate that the petitioner filed an application for settlement of his dispute on 12.8.2016 which, according to the petitioner, was within the time prescribed, but instead of presenting it before the statutory authority, he presented it before the Assistant Commissioner, Commercial Taxes who rejected it on the ground that the same has not been properly filed, it is not in accordance with the proforma and it is not within the time prescribed. Even if the reasons for rejecting of the application may be correct, which is disputed by the petitioner, the fact remains that under law the Assistant Commissioner, Commercial Taxes is not authorized to deal with the application. Even if there was any error or the application was not maintainable under Section 5 pertaining to disposal of application under the Act of 2016, Section 3 authorizes the prescribed authority to verify various aspects of the matter as detailed therein and take a decision.

That being so, it is only the prescribed authority who is authorized to dispose of an application and no other authority is competent to deal with the application. Even if the petitioner had wrongly filed the application before the Assistant Commissioner, Commercial Taxes, the Assistant Commissioner, Commercial Taxes should have immediately placed the application before the competent statutory authority, namely the Joint Commissioner, Commercial Taxes (Administration) and it would have been for the latter to deal with the matter in accordance with law. This having not been done and as the application of the petitioner was disposed of by an unauthorized person, we allow this petition, quash the order dated 28.8.2017 and restore the application to its original file and direct the Joint Commissioner, Commercial Taxes

(Administration) to deal with the application and dispose it of in accordance with law.

We may indicate that we have not expressed any opinion with regard to the merit of the matter, including the fact as to whether the application was maintainable, in prescribed proforma meeting statutory requirements which aspects are left open to be decided by the authority.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.03.2018
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