IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.1047 of 2017

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M/s Natraj Engineers (P) Ltd., Sarai, Hazipur, Vaishali having its registered office at 146, Patliputra Colony, Police Station- Patliputra Colony, Patna- 800013 through its authorized Signatory namely Amar Kumar Prasad Sinha, Son of Late Ram Kishore Prasad Sinha, Resident of 146, Patliputra Colony, Police Station- Patliputra Colony, Patna- 800013.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, New Secretariat, Bailey Road, Patna.
2. The Principal Secretary cum Commissioner, Department of Commercial Taxes, New Secretariat, Bailey Road, Patna.
3. The Joint Commissioner of Commercial Taxes (Appeals) Tirhut Division, Muzaffarpur.
4. The Assistant Commissioner, Hajipur Circle, Hajipur.
5. The Commercial Taxes Tribunal through its Secretary, Near Anta Ghat, Gandhi Maidan, Bihar, Patna.

... ... Respondent/s

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with

Miscellaneous Appeal No. 1050 of 2017

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M/s Natraj Engineers (P) Ltd., Sarai, Hazipur, Vaishali and having its registered office at 146, Patliputra Colony, Police Station- Patliputra Colony, Patna- 800013 through its authorized Signatory namely Amar Kumar Prasad Sinha, Son of Late Ram Kishore Prasad Sinha, Resident of 146, Patliputra Colony, Police Station- Patliputra Colony, Patna- 800013.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, New Secretariat, Bailey Road, Patna.
2. The Principal Secretary cum Commissioner, Department of Commercial Taxes, New Secretariat, Bailey Road, Patna.
3. The Joint Commissioner of Commercial Taxes (Appeals) Tirhut Division, Muzaffarpur.
4. The Assistant Commissioner, Hajipur Circle, Hajipur.
5. The Commercial Taxes Tribunal through its Secretary, Near Anta Ghat, Gandhi Maidan, Bihar, Patna.

... ... Respondent/s

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with

Miscellaneous Appeal No. 1051 of 2017

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M/s Natraj Engineers (P) Ltd., Sarai, Hazipur, Vaishali and having its registered office at 146, Patliputra Colony, Police Station- Patliputra Colony, Patna- 800013 through its authorized Signatory namely Amar Kumar Prasad

Sinha, Son of Late Ram Kishore Prasad Sinha, Resident of 146, Patliputra Colony, Police Station- Patliputra Colony, Patna- 800013.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, New Secretariat, Bailey Road, Patna.
2. The Principal Secretary cum Commissioner, Department of Commercial Taxes, New Secretariat, Bailey Road, Patna.
3. The Joint Commissioner of Commercial Taxes (Appeals) Tirhut Division, Muzaffarpur.
4. The Assistant Commissioner, Hajipur Circle, Hajipur.
5. The Commercial Taxes Tribunal through its Secretary, Near Anta Ghat, Gandhi Maidan, Bihar, Patna.

... ... Respondent/s

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with

Miscellaneous Appeal No. 1048 of 2017

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M/s Natraj Engineers (P) Ltd., Sarai, Hazipur, Vaishali and having its registered office at 146, Patliputra Colony, Police Station- Patliputra Colony, Patna- 800013 through its authorized Signatory namely Amar Kumar Prasad Sinha, Son of Late Ram Kishore Prasad Sinha, Resident of 146, Patliputra Colony, Police Station- Patliputra Colony, Patna- 800013.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, New Secretariat, Bailey Road, Patna.
2. The Principal Secretary cum Commissioner, Department of Commercial Taxes, New Secretariat, Bailey Road, Patna.
3. The Joint Commissioner of Commercial Taxes (Appeals) Tirhut Division, Muzaffarpur.
4. The Assistant Commissioner, Hajipur Circle, Hajipur.
5. The Commercial Taxes Tribunal through its Secretary, Near Anta Ghat, Gandhi Maidan, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sandeep Kumar, Advocate
		Mr. Rajeev Shekhar, Advocate
		Mr. Alok Kumar, Advocate
		Mr. Sanjeev Kumar, Advocate
For the Respondent/s	:	Mr. Vikash Kumar (SC-11)

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

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-08-2018

Challenging the order passed by the Commercial Tax Tribunal, Bihar, Patna for the Assessment Years 1999-2000, 2000-2001 and 2001-2002 on 13th of July, 2017, these Miscellaneous Appeals have been filed.

As a common order has been passed in all the four cases (M.A. Nos. 1047 of 2017, 1048 of 2017, 1050 of 2017 and 1051 of 2017) for various periods, we propose to deal with the issue analogously in this order.

Petitioner entered into a contract with the Railway Administration on the basis of open tender issued in the year 1997 for manufacture, supply of Broad Gauge Monoblock Concrete Sleepers and the terms and conditions of the agreement, as are available on record, indicates that sleepers have already been supplied from the date of completion of earlier repeat order issued in the year 1995 and 1999 and further Clause 1.5 and Clauses (v) and (vii) of the Railway Board Circular dated 17.11.1995 reads as under:-

> "1.5 (i) MCI, SGCI Inserts and plastic dowels required to be embedded in the concrete by the contractor during the manufacture of concrete sleeper shall be supplied free of cost by the Purchaser at the station of manufacturing. The

Contractor shall be allowed wastage upto 0.5% on the use of insert/dowels supplied free of cost by the Purchaser."

(v). In the use of MCI/SGCI Inserts supplied free of cost by the purchaser, the permissible wastage will be limited to 0.5%.

(vii) Free supply of HTS Wire shall be made at the rate of 9 Kg. per sleeper. Consumption of special cement against this Repeat order shall be accounted for at the rate of 55 Kg. per sleeper to RDSO design."

It is the grievance of the petitioner that even though the MCI and SGCI Inserts have been supplied free of cost but tax has been assessed on the same merely on the assumption that the petitioner has purchased these items and transported them and further on the ground that the petitioner has not produced any evidence or documents to show that the materials have been supplied free of cost by the Railway Administration.

In Paragraph 5 of the impugned order the learned Tribunal has dealt with the issue and has given two reasons for not granting the benefit to the petitioner; one that there are evidence to show that the petitioner had purchased the item from another State and transported it to the work site and second, the petitioner has not adduced any evidence to show that the material was supplied free of cost by the Railway

Administration. Even though Sri Sandeep Kumar learned counsel appearing for the petitioner referred to the overwhelming document available on record including the clauses of the agreement as is reproduced hereinabove to say that the materials were supplied free of cost by the Railway and invited our attention to a judgment of the Division Bench of the Allahabad High Court in the case of Mukhya Rail Path Nirikshak, ... vs The Commissioner, Trade Tax-2008 (7) TMI 932 - ALLAHABAD HIGH COURT to say that when the material is supplied free of cost, it is not liable to be assessed for duty or tax.

Sri Vikash Kumar, learned counsel appearing for the State Government refuted the aforesaid contention and argued that the assessing authority and the first Appellate Authority and the Tribunal has recorded concurrent finding, the same need not be interfered with.

Even though Sri Vikash Kumar referred to the order of the Appellate Authority and tried to indicate that in the agreement in question Inserts do not form part of free supply by the Railway Administration, we are of the considered view that looking to various documents available on record, particularly Clause 1.5(i) and Clauses (v) and (vii) of the documents available on record and reproduced hereinabove, the questions warrant reconsideration as MCI/ SGCI Inserts are shown to be supplied free of cost by the Railway Administration in the agreement and circular (Annexure-3) itself and if these materials were supplied free of cost by the Railway Administration to the petitioner, a prudent approach should indicate that the petitioner would have not purchased them and would have claimed benefit of exemption on the free supply made. It seems that the learned Tribunal has not adverted to consider various evidence that were available on record on the ground that the petitioner has not produced adequate evidence. However, as these materials are available before us, it is a fit case where interest of justice require the matter to be re-examined by the Tribunal and a decision arrived at afresh after scrutiny of all the evidence and documents that may be produced by the petitioner.

Keeping in view the aforesaid, we allow these appeals, quash the order passed by the Tribunal dated 13th of July, 2017 and remand the matter back to the Tribunal with the following direction:-

On the petitioner appearing and filing a certified copy of this order along with all relevant documents seeking exemption on the ground of free supply of the material by the

Railway Administration, the Tribunal shall re-consider the matter and decide the question afresh in accordance with law after giving due opportunity to the department to rebut the contention of the petitioner. The Tribunal is requested to proceed to decide the issue within a period of 60 days from the date of receipt of a certified copy of this order.

With the aforesaid, the appeals stand disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	04.08.2018
Transmission Date	