IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13669 of 2017

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Bhawani Automobiles a partnership firm having its office at Khabra Road, NH 28 Muzaffarpur through its Partner Manjay Kumar, Son of Shri Hardev Choudhary, resident of Kanhauli, Vishnu Dutt, P.O. Muzaffarpur, P.S. Mithanpura, District Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. The Dy. Commissioner of Commercial Taxes, West Circle, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Advocate

For the Respondent/s : Mr. Vikash Kumar, S.C. 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 : 05-07-2018

Seeking a mandamus to the Commercial Tax Department in the State of Bihar to either rectify the online Form ‘C’ issued to the petitioner for the second quarter of 2014-15, or in the absence of there being a provision for rectification, to issue a separate Form ‘C’ for the transaction in question, this writ petition has been filed.

The facts in nut shell go to show that petitioner purchased three wheelers from M/s Atul Auto Ltd., Rajkot, Gujarat for a total consideration of Rs. 1,66,31,180.83/-. The petitioner on import of such goods is said to have paid entry tax at the applicable rate and the petitioner has disclosed the same in the returns filed by him under the Bihar Value Added Tax Act, 2005, as is evident from the returns available on record (Annexure-1 series). For the purchases made, the goods were taxable at two rates, namely, 14.5% and 15% respectively. Goods to the tune of Rs. 61,26,955/- were taxable at the rate of 14.5% and goods to the tune of Rs. 10504225.53/- at the rate of 15%. It is the case of the petitioner that the Accountant in the petitioner's establishment taking note of the fact that part of the goods are taxable at 14.5% and the remaining at 15% filed a separate application online for generating a Form 'C' initially for the value of Rs. 61,26,955/- for the period in question and the Form 'C' was generated, as is evident from Annexure-2. Thereafter, for the remaining tax payable at 15% for the transaction of Rs. 10504225.53/- when again an online application was submitted, the system of online submission of Form 'C' did not permit the second form to be generated and rejected the request of the petitioner. The petitioner, therefore, sought for cancellation of the Form 'C' granted, or its rectification or issuance of a fresh consolidated Form 'C'. When nothing was done, a representation was submitted by the petitioner and when the representation did not yield any result, the matter has come to this Court at the instance of the petitioner in this petition under Article 226 of the Constitution. As indicated hereinabove, three folded relief, alternate in nature, are made by the petitioner. The first is that the Form 'C' may be rectified, if not possible, a separate Form 'C' for the transaction of more than Rs. 10504225.53/- be granted or if this is also not possible, both the Form 'C' be cancelled and a consolidated new Form 'C' be generated.

Respondents on being noticed have filed a detailed reply and instead of answering the submission of the petitioner, has come out with a case that once the online system of generating Form 'C' has been put into place, the module has been developed for the said purpose and when the module does not permit any rectification or generation of two Form 'C', it is stated that the same is not permissible. That apart, it is indicated in the counter affidavit that the petitioner has made misleading statement.

It is further stated in the return that the scope for rectification within 48 hours is permissible and the petitioner failed to take recourse to the said remedy available in the module of generating the online Form 'C'. It is also indicated that it was effective on the date when the present request was made by the petitioner.

Be it as it may be, having considered the rival contentions, we are of the considered view that prima facie the contention of the petitioner that in the peculiar facts and circumstances as are detailed hereinabove, possibility of the Accountant in the establishment of the petitioner having committed a genuine mistake cannot be brushed aside or disbelieved at the very outset. The system may not generate the second Form 'C' but, nothing, statutory in nature is brought to our notice which prevents rectification of Form 'C', its cancellation or generating a new Form 'C'. Until and unless the statutory rule does not prohibit the petitioner from claiming the benefits as are sought for in this writ petition, merely on the ground that the system does not permit so, the statutory authority cannot deny considering petitioner's case. The respondents are free to hold an inquiry with regard to the bona fide of the mistake committed by the petitioner and after proper inquiry reject it or impose such penalty or take such steps as are permissible under law at the time of conducting the assessment proceeding but under such apprehension at the very outset rectification, correction, cancellation or issuance of a fresh Form ‘C’, in our considered view, cannot be denied until and unless statutory provisions so contemplate. Taking note of all these circumstances, we direct Respondent No. 1, Commissioner of Commercial Taxes, Bihar, Patna to take note of the representation of the petitioner, as is available on record, hear the petitioner, if required, grant them opportunity to produce all material before him and thereafter pass appropriate orders within 15 days from the date of appearance of the petitioner with regard to either correction of the Form ‘C’, its rectification, cancellation or issuance of a new Form ‘C’. In case the Commissioner feels that further inquiry into the matter will be required, he would be free to refer the matter to the Assessing Officer to consider the same but shall issue Form ‘C’ to enable the transaction of the petitioner to be completed. That apart, while considering the issue in question, the Commissioner shall also take note of the earlier judgments of this Court in identical situation (Annexures- 6 and 7).

With the aforesaid observations and directions, the writ petition stands disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	10.07.2018
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