IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2588 of 2019

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Amarpur Construction Company Pvt. Ltd., Amarpur, Banka through its Director Santosh Kumar Kanodia aged about 32 years (Male) Son of Sahdeo Kanodia, Resident of Amarpur, P.S. Amarpur, District-Banka.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner of State Tax Commercial Tax Department, Bihar, Vikas Bhawan, Bailey Road, Patna
2. The Principal Secretary Cum Commissioner of State Tax Commercial Tax Department, Bihar, Vikas Bhawan, Bailey Road, Patna
3. The Commissioner, State Tax Commercial Tax Department, Bihar, Vikas Bhawan, Bailey Road, Patna
4. The Joint Commissioner, State Tax Commercial Tax Department, (Administration) Bhagalpur Circle, Bhagalpur
5. The Joint Commissioner, State Tax Commercial Tax Department, (Appeal) Bhagalpur Circle, Bhagalpur.
6. The Deputy Commissioner, State Tax Commercial Tax Department, (Audit) Bhagalpur Circle, Bhagalpur.
7. The Assistant Commissioner, State Tax Commercial Tax Department, Bhagalpur Circle, Bhagalpur.
8. The Commercial Tax Officer, Bhagalpur Circle Bhagalpur
9. The Branch Manager, State Bank of India, Main Branch, Bhagalpur
10. The Branch Manager, Bank of India, Main Branch, Bhagalpur.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Ms. Sushmita Mishra, Adv.
For the State	:	Mr. Vikash Kumar, SC 11
For the Respondent No. 10 Bank of India	:	Mr. Rupak Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 07-03-2019

Leave is granted to Ms. Sushmita Mishra, learned Counsel for the petitioner to correct the memo of parties matching the Vakalatnama during the course of the day in the pleadings of the Court as well as the pleadings of the Government Counsel.

Heard Ms. Sushmita Mishra, learned Counsel for the petitioner and Mr. Vikash Kumar, learned SC 11 for the State.

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the order dated 17.01.2019 passed by the respondent no. 8, the Commercial Tax Officer, Bhagalpur Circle, Bhagalpur together with the notice of demand dated 18.01.2019 issued in purported exercise of powers vested under Section 47 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') and the Rules framed thereunder, whereby respondent no. 9, the Branch Manager, State Bank of India, Main Branch, Bhagalpur alongwith the Branch Manager, Bank of India, Main Branch, Bhagalpur have been directed to pay into the Government Treasury/Bank an amount to the tune of Rs. 20,92,293/- stated towards penalty under 'the Act' and a sum of Rs. 3750/- towards penalty under the Central Sales Tax Act for the period 2012-13. Copies of the orders are impugned at Annexures-1 and 2 to the writ petition.

Two grounds have been raised by Ms. Mishra to question the order while admitting that the petitioner feeling aggrieved by the order has chosen to move the Commercial Taxes

Tribunal under its Appellate Jurisdiction in so far as the merits of the order is concerned. She submits in reference to e-mail notice at Annexure-8 that even when the notice required the petitioner to make deposit by 17.01.2019, without waiting for the day to pass that, the order at Annexure-1 has been passed on 17.01.2019 itself and which is followed by issuance of demand notice on 18.01.2019. It is further submitted that though the proceedings have been initiated on an Audit objection raised by the Department under Section 26 of 'the Act' read alongside Rule 22 of the Rules but a plain reading of the Audit objection at Annexure-5 would confirm that the claim of the petitioner towards input tax credit was accepted though with minor modification on the amount but this relevant aspect of the matter has escaped notice of the Assessing Authority while passing the order and it is feeling aggrieved by such non-application of mind that the petitioner has chosen to move in appeal under Section 73 of 'the Act' before the Commercial Taxes Tribunal and in the meanwhile, the notice under Section 47 of 'the Act' has been issued impugned at Annexure-2 and consequently the Bank account of the petitioner has been attached, thus not allowing the petitioner to carry on its business transactions.

This matter was heard by us earlier and since the statutory appeal was already filed and pending before the Commercial Taxes Tribunal, we expressed our reservations to enter into the merits of the case but then two issues which are raised by Ms. Mishra does invite the consideration for the purpose of the attachment notice issued under Section 47 of 'the Act'.

We allowed time to Mr. Vikash Kumar, learned SC 11 to verify the complaint made by Ms. Mishra towards non-application of mind, from the records of the assessment proceedings but have been not posted with any materials which would contest the plea taken by the petitioner to challenge the notice under Section 47 of 'the Act' and in such view of the matter and as well, taking note of the fact that the appeal of the petitioner is pending where the petitioner would be at liberty to raise all issues including issues noted hereinabove, we are certainly persuaded to quash the attachment notice for the hurriedness with which it has been issued as well in view of the pendency of the matter before the Commercial Taxes Tribunal.

For the reasons so discussed the notice under Section 47 of 'the Act' dated 18.01.2019 at Annexure-2 is quashed and set aside.

It goes without saying that the recovery whatsoever made by the Department consequent upon the issuance of the impugned attachment notice, would abide by the final outcome of the proceeding pending before the Appellate Authority.

The writ petition is allowed with the directions above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana/
Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.03.2019
Transmission Date	NA