IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6719 of 2019

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M/s. Tirupati Sugars Ltd. P.O. Naraipur, P.S. Bagaha, District-West Champaran (Bihar) through it's General Manager Arun Kumar, Male, aged about 55 Years old son of Late R.K. Maldahiyar, resident of Tirupati Sugars Ltd. premises, Bagaha, P.S. Bagaha, District-West Champaran

... ... Petitioner

Versus

1. The State of Bihar though the Commissioner State Taxes-cum-Principal Secretary, Commercial Taxes Department, Bihar having its office at Vikash Bhawan, Bailey Road, Patna.
2. The State Taxes Joint Commissioner, Bagaha Circle, Bagaha, District West Champaran.
3. The Deputy Commissioner of Commercial Taxes, Bagaha Circle, Bagaha, District-West Champaran.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ramesh Kumar Agrawal, Adv.
For the Respondent/s	:	Mr. Vikash Kumar, SC 11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

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

Date : 30-04-2019

Heard Mr. Ramesh Kumar Agrawal, learned Counsel for the petitioner and Mr. Vikash Kumar, learned SC 11 for the State in its Commercial Taxes Department.

The petitioner questions the order dated 14.03.2018 passed by the Deputy Commissioner of Commercial Taxes, Bagaha Circle, Bagaha, impugned at Annexure-3 in purported exercise of powers vested in him under the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the VAT Act'), whereby he has treated the deposit made by petitioner vide Challan meant for a deposit under 'the VAT Act' present at Annexure-1, as a deposit under the Central

Sales Tax Act, 1956 (hereinafter referred to as 'the CST Act') since the tax payer identification number entered in the Challan refers to the registration of the petitioner under the Central Sales Tax Act, 1956. Consequently by showing an outstanding tax liability under 'the VAT Act' that while allowing the petitioner to seek a refund under the Central Sales Tax Act, the assessing authority has not only assessed tax liability under the 'VAT Act' but an interest has also been levied over the outstanding amount.

The short submission made by Mr. Agrawal is that it is due to bonafide mistake and inadvertence that the tax identification number of CST was incorrectly mentioned in the Challan relatable to the VAT, however since the Challan was meant for deposit of tax under the 'VAT Act', the Assessing Authority instead of having a pragmatic approach has committed a serious illegality to hold the petitioner a defaulter under the Bihar Value Added Tax Act and to impose interest as well by treating it a deposit under 'CST Act'. According to Mr. Agrawal, if the Challan at Annexure-1 is treated as a deposit under 'the VAT Act', there would be no outstanding.

It is bearing note of such submission and the bonafide error evident from the Challan that we allowed the State to show prudence but which is not forth coming for no counter affidavit is filed even after the issues were taken note of by this Court in the order dated 15.04.2019. On instructions, it is submitted by Mr.

Vikash Kumar that a revision application under Section 74 may result in correction of the error.

We have heard learned Counsel for the parties and have perused the records and we certainly do not intend to remand the matter for a discharge which should have been already carried out by the statutory authorities. In fact, having noted the bonafide error committed by the petitioner while mentioning the Taxpayer Identification Number, while depositing the tax through a Challan meant for a deposit under 'the VAT Act', the Assessing Authority should have ignored the technical default because undisputedly the Challan used, was for a deposit of VAT. Now a deposit vide Challan prescribed under 'the VAT Act' can in no circumstance be treated as a deposit under the Central Sales Tax Act which is a Central Act and prescribes a different form. A bonafide error by the petitioner in mentioning tax identification number which has been unnecessarily objected upon by the Assessing Authority, has led to this otherwise avoidable litigation.

In such view of the matter, we hold the deposit made vide Challan at Annexure-1 which is the prescribed form for a deposit under 'the VAT Act', as a deposit against the liability under the said Act for the period 01.02.2015 to 28.02.2015 and since the said amount of deposit of Rs. 5,24,441/- is much higher than the tax liability under the said Act which is to the tune of Rs. 5,18,058.36/-

as confirmed from the demand notice, there can not be any outstanding and for the said reason, the assessment order in so far as it treats the deposit as a deposit under the Central Sales Tax Act, 1956 together with the order of levy of interest, is wholly illegal and unwarranted and is accordingly set aside. We consequently also quash the demand notice. Let the Assessing Authority pass a fresh order and draw fresh demand notice bearing in mind the position settled, within four weeks of the receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Archana/
Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2019
Transmission Date	NA