IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8002 of 2019

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Birla Tyres Ltd. A Company registered under the Companies' Act, 1956 having its office at Maa Madhuri Market M.G. Setu Road, Phari,- Patna through its authorized signatory Anand Vardhan, son of Shri Narayan Prasad resident of 53/51 fifth Floor, Narmada Apartment, Behind L.I.C. Jeevandeep Building, Exhibition Road, Patna, P.O.- Bankiore, P.S. Kotwali.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Additional Commissioner of State Tax (Appeal) Central Division, Patna.
3. Commercial Taxes Officer 1 Patliputra, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.D.V.Pathy, Mr. Sadashiv Tiwai
Ms. Manju Jha, Advocates

For the Respondent/s : Mr.Vikash Kumar (SC11)

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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 : 01-05-2019

Heard Mr. D V Pathy, learned counsel appearing for the petitioner and Mr. Vikash Kumar, learned SC 11 for the State.

Petitioner is aggrieved by the order dated 14.12.2018 passed by respondent no. 2- Additional Commissioner of State Tax

(Appeal), Central Division, Patna impugned at Annexure-5, whereby the appeal has been dismissed and the reason is because fresh ‘Form F’ as directed by the appellate authority could not be produced by the petitioner before the appellate forum.

The issue which is raised lies in a very narrow compass and we have already taken note of the same while allowing the State to file their counter affidavit. It is the format of Form ‘F’ issued by Commercial Taxes Department in the State of Jharkhand deposited by the petitioner for reducing tax liability which does not satisfy the respondent because it mentions the State of Bihar. According to Mr. Pathy the form must have been printed when the State of Jharkhand was a part of the unified State of Bihar i.e. before the Bihar Re-Organization Act, 2000 came into force. He submits that even when the onus has been discharged, the problem for the petitioner continues because the State of Jharkhand continues to use Form ‘F’ bearing the name of the State of Bihar as the issuing State and copies of which are placed vide Annexure-3 series. He submits that even when the Commercial Tax Officer, Koderma Circle, Koderma has clarified that the Form relates to the State of Jharkhand and an order to such effect is also passed by the concerned authority copy of which is at Annexure-3 which not only contains the request of the petitioner for issuance of modified format but also encloses the Form which has been issued after modification yet the objection is maintained by the appellate authority and who requires the petitioner to obtain fresh 'Form F' from the State of Jharkhand showing the State of Jharkhand as the issuing State.

We have been experiencing State generated litigations which are avoidable but the case in hand tops the list. An unwarranted objection is raised by the appellate authority which is not founded on any reason and is nothing but to cause harassment to the assessee. In our opinion, in view of the orders of the Commercial Taxes Officer of the State of Jharkhand present at Annexure-3 series coupled with the endorsement present in the 'Form F' as manifest from the enclosures to Annexure-3, which confirms the issuing State, a mindless mechanical objection by the appellate authority has led to the present proceeding which as we have observed was completely unwarranted and was avoidable. We in fact were in error in expecting the respondent -assessing authority, Commercial Tax Department including the appellate authority concerned to demonstrate prudence by correcting the course of things when we noted the grievance raised by the petitioner in our order dated 19.04.2019 but the prudence expected is not forthcoming nor they have chosen to file any counter affidavit and thus we believe that they have no answer to give. Strictly speaking, we are persuaded to levy heavy cost on the department for generating an otherwise unwarranted litigation which is in the teeth of the litigation policy so well talked by the State.

We are of the considered opinion that in view of the order of the taxing authority of the State of Jharkhand at Annexure-3 series whatsoever may have been the doubt in the minds of the statutory authority concerned, should have been laid to rest and there was no occasion for the appellate authority to direct the petitioner to obtain fresh 'Form F' from Commercial Tax Department of the State of Jharkhand knowing fully well that having once issued such form as manifest from Annexure-3 series, the said department would not be issuing a second set.

Having expressed ourselves on the issue, we quash the order bearing Memo No. 562 dated 14.12.2018 passed by the Additional Commissioner of Tax (Appeal), Central Division, Patna together with the assessment order in so far as it rejects the claim of the petitioner resting on production of the 'Form F' in regard to inter State stock transfer is concerned and remit the matter to the Commercial Taxes Officers, the respondent no. 3 for disposal of the matter afresh, in accordance with law and with due prudence.

The writ petition is allowed with the directions above.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

mrl./-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	21/05/2019
Transmission Date	N.A.