

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7087 of 2019

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M/s Ramji Traders a proprietorship firm having its place of Business at Kavi Chowk, Shahpur Undi, Patory Samastipur through its Proprietor Namely Ranjay Lohia Son of Nand Kishore Lohia resident of Ward No. 11, Hasanpur Surat, Gola Road, Patory, Samastipur- 848504

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner Department of Commercial Taxes, Govt. of Bihar, New Secretariat, Patna.
2. The Joint Commissioner of State Taxes, Samastipur Circle, Samastipur.
3. The Assistant Commissioner of State Taxes, Samastipur Circle, Samastipur.

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 7935 of 2019

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M/s Ramji Traders a proprietorship firm having its place of business at Kavi Chowk, Shahpur Undi, Patory Samastipur through its proprietor namely Ranjay Lohia male aged about 51 years Son of Nand Kishore Lohia Resident of Ward No.11, Hasanpur Surat, Gola Road, Patory, Samastipur- 848504.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, Govt. of Bihar, New Secretariat, Patna.
2. The Joint Commissioner of State Taxes, Samastipur Circle, Samastipur.
3. The Assistant Commissioner of State Taxes, Samastipur Circle, Samastipur.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 7087 of 2019)

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Adv.
Mr. Alok Kumar Jha, Adv.

For the Respondent/s : Mr.Vikash Kumar, SC11

(In Civil Writ Jurisdiction Case No. 7935 of 2019)

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Adv.
Mr. Alok Kumar Jha, Adv.

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 : 24-04-2019

Heard Mr. Gautam Kumar Kejriwal, learned counsel for the petitioner in each of the two writ petitions while the State is represented through Mr. Vikash Kumar, S.C.11.

Since the two writ petitions concerns the same petitioner who is aggrieved by the assessment order passed by the assessing authority i.e respondent No.3 for the period 2016-17 in so far as C.W.J.C. No.7087 of 2019 is considered and 2017-18 in so far as C.W.J.C. No.7935 of 2019 is concerned (hereinafter referred to as the 'second writ petition') and the issue raised in each of the two writ petitions is the same that the two writ petitions have been heard analogous and with the consent of the parties are being disposed of by a common judgment.

The assessment orders for the period 2016-17 and 2017-18 together with the demand notice for the respective years are each dated 06.02.2019 and are impugned at Annexure-2 series to the respective writ petitions. Mr. Vikash Kumar by way of preliminary objection submits that the orders are ex-parte because petitioner did not respond to the notice by e.mail and appealable under the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') read with the Central Sales



Tax Act, 1956 and the Central Sales Tax (Registration and Turnover) Rules, 1957 (hereinafter after referred to as 'the Rules').

Mr. Gautam Kumar Kejriwal, learned counsel for the petitioner while admitting to the alternative remedy and service by e-mail submits that a service by e-mail is valid and since the petitioner missed to check his e-mail that it became a ground for passing the assessment orders, ex parte. It is submitted that it is on account of ex parte proceedings that Form C which were much available with the petitioner and could be produced to support the inter State sales, could not be produced. He thus submits that if the matter is sent for a reconsideration with due opportunity to the petitioner, he can explain the inter State sales with the aid of Form C.

The facts are not in dispute. The orders passed in the two writ petitions are ex parte because the service of notice through e-mail in terms of rule 50(1)(d) of 'the Rules' framed under 'the Act', was not responded to by the petitioner as canvassed by Mr. Vikash Kumar, learned S.C.11. According to learned State counsel, even if, the petitioner was precluded from producing Form C before the assessing authority, he can well discharge his obligation before the appellate authority in view of the statutory provisions of Section 75 of 'the Act'. According to



learned State counsel, since there is no dispute on service of notice by e-mail and even if the petitioner has reasons to question the assessment order on the issue of inter State sales, opportunity is available to him before the appellate authority when he can present C form by way of additional evidence.

We have heard learned counsel for the parties and we have perused the records.

As we have observed, there is no dispute that the petitioner was served through e-mail in compliance of the provision present in rule 50(1)(d) of 'the Rules' framed under 'the Act' which inter alia also provides other forms of service. It is again not in dispute that there is no physical service of notice as per the other modes so prescribed under 'the Rules'. It is also not borne from the records that the petitioner was deliberately avoiding a service of notice. We have thus, no reasons to disbelieve the petitioner of having overlooked his e-mail because it has only enhanced his taxing liability. In fact a response to the notice, in view of the availability of form C as canvassed by Mr. Kejriwal learned counsel appearing on behalf of the petitioner, would have only reduced this tax liability. We are hence, persuaded to uphold the contentions advanced on behalf of the petitioner that there was no deliberate laches nor



an attitude of avoidance on the part of the petitioner to accept the notice of the assessment proceeding.

An issue of the present kind has been a subject matter of expression before this Court and we have taken note of some of them in an order passed in the case of **M/s Ram Deo Babu Udyog** arising from C.W.J.C. No.5501 of 2019 when this Court taking note of the opinion of a coordinate bench in a matter arising from C.W.J.C. No. 11798 of 2017 (**Aariket Traders v. the State of Bihar & anr.**) and C.W.J.C. No.17606 of 2016 (**M/s Kohinoor Boot House v. the State of Bihar & ors.**) and C.W.J.C. No. 7971 of 2018 (**M/s Freezer Point v. the State of Bihar & ors.**) and while following the principles of substantive justice has remitted the matter for fresh consideration by the assessing authority with due opportunity of hearing to the petitioner while observing thus:

"We have heard learned counsel for the parties and have perused the records. While the records of the proceeding do indicate a service of notice to the petitioner by e-mail, there is no physical service of notice on the petitioner as provided under the Rules. May be the petitioner has his reasons for not checking his e-mail which is a valid form of service but then, unless it is established that the petitioner was deliberately avoiding service, a simple case of a casual default may not be sufficient to shut the doors for such assessee and for proceeding ex-parte.

Section 31 of 'the Act' has a purpose



behind when it allows the assessee to present his case before any such order is passed and obviously an ex-parte order passed is an exception to the legislative intent as well as the object behind the principle of due representation. May be, where an assessee continues to default on a notice, the Assessing Authority has valid reasons to proceed ex-parte but a casual default of the present kind may not be sufficient enough to deny the assessee such right of representation."

It is rightly contended by Mr. Vikash Kumar that a remand of the present kind is not because the assessment order was found deficient on any statutory violation but because a right of due representation vested in the petitioner is being closed because he failed to check his e-mail.

In our opinion, in view of availability of 'Form C', there are sufficient reasons existing for inviting a fresh opinion in the changed circumstances and it is thus that we are persuaded for a remand of the matters bearing note of the opinion of the Supreme Court in the case of **Ambika Steel Ltd. versus State of U.P. & Ors.** reported in **(2009)14 SCC 309** as well as in the case reported in **(2005) 6 SCC 499 (State of H.P. versus Gujarat Ambuja Cement Ltd. and Ors.)** allowing production of such forms at any stage of proceedings. It cannot be disputed that be it a case of stock transfer or a case of inter State sale, the vendor of the goods is entirely at the mercy of the recipient of



the goods for the purpose of obtaining Form C or Form F as the case may be, for it is he who, after obtaining the same from the concerned department in recipient State, forwards it to the vendor for reducing his liability. It is the delay caused in obtaining such form from the recipient of the goods which acts prejudice to the vendor- assessee who is taxed at higher rate than as mandated in law, for inter State sales/stocks transfers. It is keeping this relevant aspect in mind that the Courts have allowed the assessee to produce these forms as and when they are able to obtain it from the recipient so that he can approach the concerned statutory authority for seeking modification in the taxable turnover.

The case in hand is with an exception because in the present case, Form C was available with the petitioner and it is but for the ex parte hearing, that the assessee could not produce the required Form C in support of his plea of inter State sales. While thus noting the submission of Mr. Vikash Kumar that it is in the circumstances as existing on the date of passing of the assessment order that the taxable turnover was assessed, we are yet persuaded to quash the said assessment orders not because it suffers from any infirmity on merits because we have not examined the assessment order on merits rather because of



the availability of the Form C and which requires to be taken into account before the assessment orders are passed.

For the reasons and discussion above, we quash the order dated 06.02.2019 passed for the period 2016-17 and 2017-18 together with the impugned demand notices impugned at Annexure-2 series in each of the two writ petitions and remit the matter to the assessing authority i.e respondent No. 3 for proceeding afresh and for passing fresh order in accordance with law with due opportunity of hearing to the petitioner who shall appear before the assessing authority on 06.05.2019 and cooperate in the disposal of the matter.

The writ petitions are allowed with the directions and observations above.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
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