IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.636 of 2013

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Abdul Sattar, son of Shri Abdul Rauf, resident of Village - Mahdahia, P.O. Narkatiaganj, P.S. Shikarpur, District - West Champaran Bihar.

... ... Appellant/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Bihar
2. Asstt. Commissioner of Commercial Taxes, Bettiah Circle, Bettiah.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.D.V.Pathy, Advocate
		Mrs. Manju Jha, Advocate
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 : 18-04-2019

Heard Mr. D V Pathy, learned counsel appearing for the appellant and Mr. Vikash Kumar, learned Standing Counsel No. 11 representing the respondent authorities.

This appeal under Section 79(2)(ii) of the Bihar Value Added Tax Act, 2005 has been preferred questioning the validity of the judgment and order dated 10.05.2013 passed by the Commercial Taxes Tribunal, Bihar, Patna in Revision Case No.

MZ/352/2007 whereby the appeal filed on behalf of the appellant has been dismissed.

The petitioner is a lease holder with the State Government under the Bihar Minor Mineral Concession Rules, 1972 and although the lease is not on record but the returns filed by the appellant herein at Annexure-1 series substantively confirms the sale. The default alleged on the part of the petitioner is that he did not pay tax on the sale though he has filed returns on the issue of royalty which is to be charged @ Rs. 6.25 per cubic meter. It is such conduct of the appellant-lease holder which invited the assessment proceeding in question for the period 1994-95 until 1999-2000 (30.11.1999). The assessment order at Annexure-2 series is confirmed in appeal. The records transpire that despite opportunity given by the assessing authority for explaining the transaction, there was no co-operation by the petitioner. It is in such circumstances and taking note of the fact that the petitioner is a lease holder with the State Government under the Bihar Minor Mineral Concession Rules but avoiding payment of sales tax under the Bihar Finance Act, 1981, that exercising best judgment assessment and treating the rate at which the Indian Railways is purchasing stone as a base price, that an order of assessment was passed in exercise of the power vested in the assessing authority under Section 17(5) of the Bihar Finance Act, 1981 (hereinafter referred to as ‘the act’).

Feeling aggrieved, the appellant moved before the Joint Commissioner of Commercial Taxes by filing an appeal as also filed a revision application before the Tribunal each of which has been rejected by the appellate authority as well as by Commercial Taxes Tribunal, respectively.

It is feeling aggrieved by the order of the Commercial Taxes Tribunal that the petitioner as appellant is before this Court, assailing the validity of the order passed by the Tribunal on a substantial question of law, as to whether, the price at which the rate of tax has been computed, has any rationale.

We have heard Mr. D V Pathy, learned counsel representing the appellant and Mr. Vikash Kumar, learned SC 11 for the State. We may observe at the outset that the conduct of the appellant althrough the proceeding in not disclosing the rate at which, sales were made, while accepting payment of royalty, prima facie did not invite indulgence to the issue raised but since the issue of sale price lies at the foundation for determination of tax liability under ‘the act’ we were persuaded to consider the issue and have heard learned counsel appearing for the parties at length.

The arguments advanced by Mr. Pathy on behalf of the appellant in support of the substantial question of law, in absence of co-operation from the appellant to disclose the rate at which the minor mineral in question was transacted, in our opinion, left no other option except the course taken by the assessing authority in relying upon the rate at which the Railways purchases similar stones. The decision taken by the Assessing Authority in the given circumstances was the best course available and treating the rate at which purchase of such stones were made by Railways, as the base price, was backed with sound reasons.

In such view of the matter and considering concurrent finding of the statutory authorities on the issue, we do not find merit in the substantial question of law raised in this appeal which is accordingly dismissed.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

mrl./-Nasimul

AFR/NAFR	NAFR
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