

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8485 of 2017

=====

M/s. Pidilite Industries Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Regent Chambers, 7th Floor, 208, Nariman Point, Jamuna Lal Bajaj Marg, Mumbai- 400021, having its branch office at Didarganj, Near Rajdhani Petrol Pump, P.O. Madhav Mills, P.S. Didarganj, District Patna- 800008, through its authorized representative Sunil Poddar, Son of Late S.L. Poddar, Resident of Exhibition Road, Ashoka Place, Block-A, 7th Floor, P.O. G.P.O., P.S. Gandhi Maidan, District Patna.

... .. Petitioner

Versus

1. The State Of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna
2. The Commissioner of Commercial Taxes, Bihar, Vikas Bhavan, Bailey Road, Patna.
3. The Deputy Commissioner of Commercial Taxes, Special Circle, Patna.
4. The Commercial Taxes Officer, Special Circle, Patna.

... .. Respondents

=====

Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Adv. Mr. Avinash Shekhar, Adv. Mr. Vijay Kumar Tiwari, Adv. Mr. Vishal Vikram Rana, Adv.
For the Respondent/s	:	Mr. Anil Kumar Sinha, GA1 Mr. Pawan Kumar, AC to GA1

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 29-03-2019

Heard Mr. Suraj Samdarshi, learned counsel appearing for the petitioner and Mr. Pawan Kumar, learned AC to GA-1 for the State.

The case in hand is a classic example of the number of times that the Assessing Authority under the Value Added Tax Act,



2005 (hereinafter referred to as 'the Act') has to exercise statutory jurisdiction for reaching a just conclusion.

The challenge is posed before us because, it has become a routine exercise by the Assessing Authority under 'the Act' to first pass an order of assessment according to his wisdom which is followed by a reassessment in case of an objection either under Section 26(3) of 'the Act' on an internal audit or under Section 33 of 'the Act', on an objection made by the Comptroller and Auditor General which leads to reopening of an assessment and consequential order of reassessment. One would expect that the buck would stop there but the case in hand belies the belief because the buck does not stop there rather has lead to multiple reassessment orders.

Now, whether or not, the law permits the Assessing Authority to routinely carry out multiple reassessment proceedings, perhaps, we would not express ourselves for the present but would definitely reserve our opinion for expression in an appropriate case.

In so far as the present case is concerned, we are satisfied to record that the initiation of re-assessment proceeding was hopelessly barred by limitation. To put the records straight we deem it necessary to refer to some of the dates which would be



relevant for the purpose of disposal of the contest which relates to the assessment year 2006-2007 ending on 31st of March, 2007. On 11.11.2009 an assessment order was passed by the Assessing Authority i.e. Commercial Taxes Officer, Special Circle, Patna in purported exercise of power vested in him under Section 31 of 'the Act' and the Rules framed thereunder. A copy of the assessment order is at Annexure-1 to the writ petition. It is feeling aggrieved by the assessment that the petitioner moved in statutory appeal before the Joint Commissioner of Commercial Taxes (Appeal), Central Division, Patna who vide order dated 03.09.2013 dismissed the same. A copy of the appellate order is at Annexure-2. Feeling aggrieved the petitioner is before the Commercial Taxes Tribunal in revision bearing Revision PT Case No. 251 of 2013 which is yet pending.

It is while the previous round of challenge was pending before the Appellate Authority that an objection came to be raised under Section 26 (3) of 'the Act' on a departmental audit, on the issue of Tax Free Sales and following which audit objection, a notice was issued to the petitioner under Section 31 of 'the Act' by the Assessing Authority on 20.12.2011. This date is quite relevant for the issue put up for contest. A reassessment proceeding followed even when the petitioner invited the attention of the



Assessing Authority that the matter was pending in appeal. The Assessing Authority proceeded with the reassessment which resulted in an order dated 26.03.2012 raising fresh liability on the issue of Tax Free Sales as well as on some other issues. This order is at Annexure-3 to the writ petition.

Feeling aggrieved the petitioner went in appeal before the Joint Commissioner (Appeals) who found gross infirmity in the exercise done by the Assessing Authority in reopening assessment for even in the opinion of the Joint Commissioner (Appeals) there was nothing on record of the proceeding which reflected any material other than those which had culminated in the original order of assessment and was pending consideration before the Revisional Authority for the present. However, the Joint Commissioner (Appeals) even while making such observation regarding lack of material present on the records, yet gave an opening to the Assessing Authority to examine whether or not there was any material to contest the plea on Tax Free Sales by the order bearing memo no. 1130 dated 11.08.2015. The Joint Commissioner remitted the matter to the Assessing Authority for an examination on the limited aspects. Despite the scope of remand delineated, it is on complete misappreciation of the order that the Assessing Authority by his order dated 25.03.2017 has



reiterated his earlier view to tax the petitioner not only on issue of Tax Free Sales but even on other issues vide order dated 25.03.2017 of the Commercial Taxes Officer, Special Circle, Patna which is impugned at Annexure-5 and is put to challenge by the petitioner through the writ petition in question.

Mr. Samdarshi has made a rather brief submission to question the exercise for according to him not only the second round exercise is hopelessly barred by limitation so prescribed under Section 26(3) of 'the Act' read alongside Section 24(3) of 'the Act', it is also a case of change of opinion by the Assessing Authority on the same set of facts which were much available even at the stage of passing of the original order by the Assessing Authority and there has been no change in the circumstances. According to Mr. Samdarshi, even though the Joint Commissioner (Appeals) had remitted the matter for consideration which was on the limited aspects as regarding Tax Free Sales and whether there was any material available for the Assessing Authority to reverse his earlier opinion which allowed the claim but the Assessing Authority in misinterpretation of the liberty granted has reopened the matter on other issues as well. In support learned Counsel has relied upon a judgment of the Supreme Court since reported in (2015)17 SCC 324 (**State of U.P. and Others versus Aryaverth**



Chawal Udyog and Others), more particularly paragraphs 22 to 29 of the judgment.

The argument of Mr. Sumdarshi has been contested by Mr. Pawan Kumar, learned AC to GA 1 in support of the impugned action and according to him neither the second round exercise was barred by limitation nor there is a change of opinion rather it is on the basis of material so available that the opinion has been expressed by the Commercial Taxes Officer which requires no interference.

We have heard the learned Counsel for the parties and we have perused the records and we are of the opinion that it is only in case the respondents would wriggle out of the plea raised by the petitioner on limitation for initiating a second round exercise that we need to express ourselves on the other issues raised by Mr. Samdarshi.

Section 26(3) of 'the Act' prescribes for a limitation period within which a departmental audit can be carried out and runs under:

“26(3) the audit of the dealer selected under sub-section (2) shall be conducted, in the manner prescribed, within a period of thirty six months from the due date within the meaning of sub-section (3) of Section 24.”



A plain reading of the provision would confirm that the audit of a dealer selected under Section 26(2), if any has to be conducted within 36 months from the due date “within the meaning of Section 24(3) of ‘the Act’.

Section 24(3) of ‘the Act’ which provides an explanation to the term due date runs under:

“24(3) Every registered dealer shall furnish to the prescribed authority, on or before the due date, a true and complete return in respect of every financial year in the form and manner prescribed.

Explanation-In this sub-section, “due date” means-

(a) the 31st day of December of the year following the year to which such return relates in the case of the following classes of dealers:

(i) a company within the maning of the Companies Act, 1956, or

(ii) a person, other than a company, whose accounts are required, under this Act or under any other law, to be audited or where the report of an accountant is required to be furnished under section 54;

(b) the 31st day of July of the year following the year to which such return relates, in any other cases.”

A plain reading of the provisions underlying Section 24(3) of ‘the Act’ would again confirm that a due date in case of any assessment order would mean 31st December of the year, following the year to which a return relates in the case of any



dealer. In simple terms it means the 31st day of December of the year in which assessment year ends which would be in the year following the assessment year.

Applying the explanation to the case in hand, since the assessment order relates to the year 2006-07 i.e. from the 01st April, 2006 to 31.03.2007, the due date in the present case would be 31st day of December, 2007 which is the year following the year to which the return relates i.e. 2006-2007. The position would become even more clear by plain reading of the provisions underlying Rule 21(2) of 'the Rules' framed under 'the Act' which relates to scrutiny of returns and reads under:

“21(2) The authority specified in sub rule (1) shall, before the expiry of the due date within the meaning of sub-section (3) of Section 24 of the Act, or the extended date within the said meaning scrutinize them in accordance with the provisions of sub-section (1) of Section 25:

Provided that the return under sub-section (3) of Section 24 shall be scrutinized before the end of the year following the year to which such return relates.”

There is a subtle distinction in the language present in the explanation attached to Section 24(3) seen against the proviso attached to Rule 21(2). While the explanation of due date attached to Section 24(3) clearly mentions 31st December of the year following the year to which the return relates meaning thereby if



the return relates to the year 2006-07 then 31st December, 2007, on the other hand the proviso to Rule 21(2) speaks of the 'end of the year' following the year to which a return relates which means that if the return relates to the year 2006-07 then the end of the year following the year to which a return relates, would mean 31.3.2008 because the term 'year' has been defined in Section 2(z) as the financial year and thus the year following the year to which the return relates in case of the year 2006-07 would mean, 2007-08.

In so far as the case in hand is concerned since assessment year in question is 2006-07 then the due date as per the explanation attached to Section 24(3) would mean 31.12.2007 and applying the date to the limitation prescribed under Section 26(3) would discern that a departmental audit had to be held on or before 31.12.2010 i.e. 36 months of the due date.

We have briefly discussed the sequence of events and in the instant case the notice for reassessment has been issued by the Assessing Authority on 20.12.2011 vide Annexure-1 to I.A No. 01 of 2019 to reopen the proceeding under Section 31 of 'the Act' which is hopelessly time barred because no departmental audit could be held beyond 31.12.2010.



As regarding other issues raised, though in terms of the observation that we have made above, we do not need to travel beyond but we are persuaded to take notice of the adventurous exercise carried out by the Assessing Authority in traveling beyond the order of remand passed by the Appellate Authority on 11.08.2015 vide Annexure-4. A plain reading of the appellate order at Annexure-4 would confirm that whereas it is on the limited issue, whether or not, the Tax Free Sales as claimed by the petitioner was rightly disallowed but the Assessing Authority has gone beyond the terms of the remands to pass an assessment order which takes into fold additional issues.

The third issue which renders the exercise illegal is that in the order so passed on remand, impugned at Annexure-5, the Assessing Authority has failed to explain the materials which surfaced subsequently and were not available at the time of the original assessment. The order is silent on such discussion and thus it was rightly canvassed by Mr. Samdarshi that the order impugned is a second opinion on same set of facts. In this regard we are persuaded to reproduce the opinion expressed by the Supreme Court at paragraph-29 of the judgment rendered in the case of **Aryaverth Chawal Udyog (supra)** which succinctly explains the legal position and confirms the illegality in the action



of the Assessing Authority to reopen the assessment and pass the order under Section 31 of 'the Act':

“29 The standard of reason exercised by the assessing authority is laid down as that of an honest and prudent person who would act on reasonable grounds and come to a cogent conclusion. The necessary sequitur is that a mere change of opinion while perusing the same material cannot be a “reason to believe” that a case of escaped assessment exists requiring assessment proceedings to be reopened. (See Binani Industries Ltd. v. CCT, (2007) 15 SCC 435; A.L.A. Firm v. CIT, (1991) 2 SCC 558). If a conscious application of mind is made to the relevant facts and material available or existing at the relevant point of time while making the assessment and again a different or divergent view is reached, it would tantamount to “change of opinion”. If an assessing authority forms an opinion during the original assessment proceedings on the basis of material facts and subsequently finds it to be erroneous; it is not a valid reason under the law for reassessment. Thus, reason to believe cannot be said to be the subjective satisfaction of the assessing authority but means an objective view on the disclosed information in the particular case and must be based on firm and concrete facts that some income has escaped assessment.”

For the reasons and discussions above, the entire proceedings initiated by the Assessing Authorities beginning from



the stage of issuance of notice on 20.12.2011 vide Annexure-1 to I.A No. 01 of 2019 and culminating in the order of assessment dated 25.03.2017 impugned at Annexure-5 is a gross abuse of statutory jurisdiction and is held per se illegal and accordingly we quash the same.

The writ petition is allowed. I.A.No. 1/2019 is disposed of.

Before parting, we would clarify that we have not expressed any opinion on the issue that remains pending before the Commercial Taxes Tribunal which has to be taken to its conclusion on its own merits.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana
Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.04.2019
Transmission Date	NA

