IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19171 of 2016

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Nand Lal Kumar @ Nand Lal Ravidas, Son of Sukhdeo Ravidas, Resident of Joga Jhingai, P.S.- Khaira, District- Jumui.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Commissioner, Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Joint Commissioner, Commercial Taxes, (Appeal) Bhagalpur Circle, Bhagalpur.
5. The Deputy Commissioner, Commercial Taxes, Jamui Circle, Jamui.
6. The Assistant Commissioner, Commercial Taxes, Jamui Circle, Jamui.
7. The Commercial Tax Officer, Jamui Circle, Jamui.
8. The Branch Manager, United Commercial Bank, Giddhour Branch, District- Jamui.
9. The Manager, United Commercial Bank, Patna Branch, Patna.

... ... Respondents

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Appearance :

For the Petitioner	:	Ms. Sushmita Mishra, Advocate
For the Respondent-State:		Mr. Vivek Prasad, GP-7
for the Respondent-Bank:		Mr. Shivendra Kumar Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 18-11-2019

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. In the present writ petition the petitioner has prayed for directing the respondent authorities to refund the amount to the tune of Rs.6,15,804/- with due interest which has been withdrawn from the fixed deposit in the bank account of the petitioner bearing No.5970110015667 in Giddhour Branch, Jamui of the United Commercial Bank.

3. It is submitted by the learned counsel for the petitioner that the respondents had no authority under the Bihar Value Added Tax Act, 2005 (for short 'the Act') to withdraw the money kept in the bank account of the petitioner without any knowledge or permission of the petitioner. She has submitted that it was incumbent upon the respondents to serve a notice under Section 47 of the Act for initiating special mode of recovery. However, without serving any notice under Section 47 of the Act, the respondents have withdrawn the amount in question from the fixed deposit account in recourse to Section 47 of the Act.

4. It is further submitted that an appeal was filed by the petitioner before the Joint Commissioner, Commercial Taxes (Appeal), Bhagalpur against the order passed by the Commercial Taxes Officer, Jamui, who set aside the notice of

demand and remanded back the case on 15.06.2016 for passing order afresh in the light of the objection raised by the petitioner that the Assessing Officer passed the order without taking into consideration that the wine up to Rs.845/- is not taxable.

5. The respondent nos. 8 and 9 have filed their counter affidavit in which they have pleaded that the Branch Manager of the bank had received a notice of demand under the statutory form vide letter dated 27.02.2016 stating a sum of Rs.11,39,161/- to be due and realizable against the petitioner and it was further mentioned in the said notice that the amount which is held by the bank is to be remitted to the Government as per Section 47 of the Act. Since the bank did not receive any order of stay obtained by the petitioner from the court of law on the aforesaid notice, the respondent-bank was under statutory obligation under Section 47 of the Act to remit the amount to the Commercial Taxes Department. Accordingly, after encashing the fixed deposit amount and adjusting the loan account which was already classified as non-performing assets, the balance of Rs.6,15,804/- was utilized for preparation of the Demand Draft dated 29.03.2016 in the name of Deputy Commissioner, Commercial Taxes Department, Jamui and the same was handed over to the Commercial Taxes Department.

6. Learned counsel appearing for the Bank submitted that the respondent-bank has only discharged its statutory obligation for which it had received instructions from the Commercial Taxes Department, Jamui.

7. Learned counsel appearing for the respondent-Commercial Taxes Department stated that the petitioner was engaged in purchase of Indian-made foreign liquor for which he was granted license from the Excise Department, Jamui for the period 2015-16. He was liable to pay tax under the Act, but he did not apply for registration. Thus, a notice under Section 28(1) of the Act was initiated against the petitioner on the basis of figure received from the Joint Commissioner, Commercial Taxes, Central I.B., Bihar, Patna which was provided by Bihar Beverage Corporation Ltd. The notice was served to the petitioner, but he neither applied for the registration nor gave any reply on the fixed date on 28.08.2015. Again, a notice dated 23.11.2015 was served to the petitioner, but he did not appear on the date fixed on 10.12.2015. Finally, a notice dated 08.01.2016 was served to the petitioner in which total VAT liability from April, 2015 to August, 2015 was notified, but the petitioner neither applied for the registration nor gave any reply on the date fixed on 15.01.2016. Hence, an *ex parte* order was passed

on 20.02.2016 on the basis of the figure received from the Joint Commissioner, Commercial Tax Department and demand created under Section 28(1) of the Act. However, a demand notice dated 20.02.2016 was issued for Rs.11,39,161/-. The person present on the premises did not receive the notice. Hence, notice was placed on the shop. Further, in the interest of recovery of dues, a notice in prescribed format was issued to the bank on 27.02.2016 under Section 47 of the Act. Though, notice was served to the petitioner, the petitioner did not receive the notice, which was placed on the shop.

8. He has further contended that after the remand, a notice dated 13.08.2018 was issued to the petitioner. The petitioner personally received the notice on 16.08.2016, but he neither appeared on the date nor gave any explanation.

9. He has further contended that a fresh order under Section 28(1) of the Act could not be passed, as the petitioner is yet to provide the books of account.

10. We have heard the parties and perused the materials on record.

11. Section 28 of the Act provides for assessment of tax of dealers evading registration. It provides that if the prescribed authority is satisfied upon information which has

come into his possession that reasonable grounds exist to believe that any dealer has been liable to pay tax under the Act, in respect of any period, and has willfully failed to apply for grant of certificate of registration, or having so applied, failed to furnish any particulars or information required for the purpose of Section 19; thereafter, the prescribed authority shall after giving the dealer a reasonable opportunity of being heard, assess to the best of its judgment, the amount of tax due, if any, from the dealer in respect of such period and all subsequent periods; and the prescribed authority may direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum of one hundred rupees for every day of the period during which the dealer failed to apply for registration or failed to furnish any particulars or information required for the purpose of Section 19 or an amount equal to the amount of tax assessed, whichever is higher.

12. Section 47 of the Act provides for special mode of recovery of tax and other liabilities under the Act. It reads as under:-

> **"47. Special mode of recovery of tax and other liabilities under this Act.-**
> (1) Notwithstanding anything contained in section 39 or any law or contract to the contrary, the prescribed authority may, at any

time or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to the said authority) direct-

(a) any person from whom any money is due or may become due to a dealer who has failed to comply with a notice of demand served under section 39; or

(b) any person who holds or may subsequently hold any money for or on account of such dealer, to pay into Government treasury, in the manner specified in the notice issued under this sub-section, either forthwith or upon the money becoming due or being held, or within the time specified in the notice (not being before the money becomes due or it is held) so much of the money as is sufficient to pay the amount of tax due from the dealer, together with interest and penalty, if any, under this Act or the whole of the money when it is equal to or less than that amount.

(2) The authority issuing a notice under sub-section (1) may, at any time or from time to time, amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice issued under sub-section (1) shall be deemed to have made the payment under the authority of the dealer and the receipt from the Government Treasury shall constitute a good and sufficient discharge of the liability of such person to the dealer to the extent of the amount specified in the receipt.
(4) Any person discharging any liability to the dealer after service on him of the notice issued under sub-section (1) shall be personally liable to the State Government to the extent of the liability discharged or to the extent of the liability of the dealer for tax, interest and penalty, whichever is less.
(5) Where a person on whom a notice is served under sub-section (1) proves to the satisfaction of the authority which issued the notice that the money demanded or any part thereof was not due to the dealer or that he did not hold any money for or on account of the dealer, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the dealer or be held for or on account of the dealer, nothing contained in this Section shall be deemed to require such person to pay into the Government Treasury any such money or part thereof, as the case may be.
(6) If any person contravenes any of the

provisions of sub-sections (1) and (4) of this Section, the prescribed authority shall after giving an opportunity of being heard by an order in writing direct that such person shall pay by way of penalty a sum not exceeding twice the amount payable under sub-section (1).

(7) Any amount of money which a person is directed to pay under sub-section (1) or for which he is personally liable to the State Government under sub-section (4), shall, if it remains unpaid, be recoverable as an arrear of land revenue.

(8) No action shall be taken under this Section in respect of any amount of tax, interest and penalty, if any, the date of payment of which has been extended or the realisation of which has been stayed under this Act during the period of such extension or stay.

(9) The provisions of this Section shall be without prejudice to any action that may be taken for recovery of the arrears of tax, interest and penalty, if any, due from the dealer or person."

13. In the instant case, the amount of Rs.6,15,804/- has been realized from the account of the bank by the respondent-Commercial Taxes Department in exercise of powers conferred under Section 47 of the Act. The said power

has been invoked in view of the fact that the petitioner has failed to respond to the notice issued under Section 28(1) of the Act. The withdrawal of the amount in question from the bank was made prior to the order by the appellate authority whereby the matter was remanded back for passing order afresh. The issue of refund of the amount to the tune of Rs.6,15,804/- withdrawn from the fixed deposit in the bank account of the petitioner with due interest would arise only if it is found that the amount is in excess of the amount due from the petitioner.

14. In that view of the matter, action of the respondent authorities of the Commercial Taxes Department in invoking the jurisdiction under Section 47 of the Act can not be held to be bad.

15. Accordingly, the writ petition is disposed of with a direction to the taxing authority i.e. the Commercial Taxes Officer, Jamui Circle, Jamui (respondent no.7) to pass order afresh as directed by the appellate authority within a period of two months from the date of receipt/production of a copy of the order in accordance with law after hearing the parties. After the order is passed, in case respondent no.7 comes to the conclusion that any excess amount has been withdrawn from the account of the petitioner towards the recovery of the

due amount of tax, penalty and interest, he shall be required to refund the amount to the petitioner in accordance with law forthwith.

16. It is made clear that if the petitioner does not co-operate and fails to produce the books of account, etc., the respondent no.7 shall be at liberty to pass an *ex parte* order.

(Ashwani Kumar Singh, J.)

(Anil Kumar Sinha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.11.2019
Transmission Date	NA