IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15687 of 2017

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Cadbury India Ltd. (Now known as Mondelez India Food Pvt. Ltd.), a company incorporated under the Companies Act having its branch office at Khata No.1822, P.O. + P.S.- Didarganj, Patna through its Deport Manager Navin Kumar Singh, Son of Shri Umesh Chandra Singh, Resident of Danka Imli, Ganga Bridge Road, Bajrangpuri, P.O. Guljarbag, P.S. Alamganja, District-Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxex, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. The DY. Commissioner of Commercial Taxes, Patliputra Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.V.Pathy, Adv.
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
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 08-08-2019

The petitioner prays for a direction to the respondent-Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna to permit generation of Form 'F' for the 2nd and 3rd quarter of financial year 2012-13 online.

The petitioner is a limited company engaged in the business of trading in Chocolates, biscuits and other confectioneries and is registered under the Central Sales Tax Act, 1956 (hereinafter referred to as the 'CST Act') and the Bihar Value

Added Tax Act, 2005 (hereinafter referred to as the 'VAT Act') amongst other legislations.

The matter relates to the assessment year 2012-13 and it is because the returns filed by the petitioner in respect of a stock transfer for the 2^{nd} and 3^{rd} quarter of the financial year 2012-13 suffered some defects to declare a lesser amount in respect of receipts by way of transfer of stocks from its branches outside the State of Bihar that the generation of Form 'F' for the 2^{nd} and 3^{rd} quarters is found not in tune with the actual state of affairs, although according to the petitioner, the entire position in relation to transfer of stocks for the period 2012-13 was reflected in the annual returns filed by the petitioner. The representations filed by the petitioner in this context are on records of the proceedings and to some extent the Deputy Commissioner, Commercial Taxes through his letter dated 22.07.2016 and 28.04.2017 at Annexures 5 and 4 respectively to the writ petition did make recommendation to the Commissioner, Commercial Taxes cum Principal Secretary for rectification of the error but since according to the respondents in the Commercial Taxes Department no such rectification can be done after lapse of the prescribed period nor did the petitioner file revised return within the time stipulated that the issue cannot be resolved even if the position was clarified in the annual returns.

It is in the light of the order passed by this Court that a supplementary counter affidavit is filed by enclosing an advisory dated 30.03.2013. It is informed that a detailed procedure is present in the notification for generation of Form ‘F’. It is also the stand of the respondents that vide S.O. No.4021 dated 25.10.2016 online procedure for rectification in Form ‘F’ and ‘C’ has been notified but the case of the petitioner is not regarding defect in Form ‘F’ generated rather the defect is in the return itself and for which no steps were taken by the petitioner to revise the return within the time framed.

Mr. D.V. Pathy, learned counsel has appeared for the petitioner to seek a direction in favour of the petitioner while the State is represented through Mr. Vikash Kumar, learned Standing Counsel No.11.

While according to Mr. Pathy, the objection raised by the department in not permitting the petitioner to generate Form ‘F’ for the 2nd and 3rd quarters of the financial year 2012-13 in tune with the actual receipts of stocks from outside the State is arbitrary, according to Mr. Vikash Kumar, learned Standing Counsel No.11, the issue is not as simple as being projected by Mr. Pathy rather where the defects lies in the return itself, even if the petitioner may have rectified the same in the annual return but until such time that the 2nd and 3rd quarter returns are revised in tune with the annual return, the prayer made cannot be accepted.

Leaned counsel for the petitioner has relied upon a Division Bench opinion in the matter arising from **CWJC No.18263 of 2015 (Dayanand Prasad Sinha and Company vs. The State of Bihar)** which was heard analogous with several other writ petitions to submit that directions were issued for rectification of the error but the reliance on the judgment has been contested by Mr. Vikash Kumar, learned Standing Counsel No.11 to submit that the issues were entirely different.

Mr. Pathy has also placed strong reliance in the case of **State of H.P. Vs. Gujarat Ambuja Cement Ltd.** reported in **(2005) 6 SCC 499** in support of his contentions.

We have heard learned counsel for the parties and we have perused the records and the only issue which falls for consideration is, whether in the admitted facts that the 2nd and 3rd quarters for the financial year 2012-13 suffered defects on the information on stock transfer and though the position was clarified in the annual returns whether it would entitle the petitioner to the relief prayed in the writ petition. For the purpose I am persuaded to refer to some of the statutory provisions which needs consideration in the present case.

Section 6A of the 'CST Act' lays the burden of proof in case of transfer of goods claimed otherwise than by way of sale on the dealer who claims that the transfer of the stocks is otherwise than by way of sale and for which purpose he has to obtain a declaration duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority along with the evidence of dispatch of such goods. However, if the dealer fails to furnish such declaration then the movement of transfer would be treated as sale.

In the present case the petitioner is the recipient of the goods from outside the State and thus it was his duty to file appropriate returns of the stock receipt and accordingly generate Form 'F' in prescribed form in terms of the Central Sales Tax (Registration and Turnover) Rules, 1957 (hereinafter referred to as the 'CST Rules, 1957'). In fact rule 11 of the 'CST Rules, 1957' deals with the determination of turn over and sub-rule (5) thereof prescribes the declaration in Form 'F' in reference to the provisions of section 6A(1) of the 'CST Act'.

In exercise of powers vested under section 13 of the 'CST Act', the State of Bihar has framed its own rule called the Central Sales Tax (Bihar) Rules, 1957 (hereinafter referred to as the 'Bihar Rules'). Rule 9 of the 'Bihar Rules' deals with the authority from whom declaration may be obtained and rule 9C thereof prescribes the authority for whom the declaration in Form 'F' can be obtained. This rule was incorporated by virtue of the Central Sales Tax (Bihar Amendment) Rules, 2016 which was made effective from 04.07.2012. According to sub-rule (1) of rule 9C any dealer who claims exemption in respect of any sale referred in section 6A(1), is required to obtain declaration duly filled in Form 'F' in terms of rule 12(5) of the 'CST 1957 Rules'. A duty is cast on the transferee-dealer to fill in the particulars in the declaration correctly before it is handed over to the selling dealer.

The issue which falls for consideration in the present case is that a defect has entered in the returns filed for the 2nd and 3rd quarter by the petitioner in so far as the receipt of stocks from other State is concerned which has been understated and even when the petitioner claims to have filled up the details correctly in the annual returns for the financial year 2012-13 yet no step was taken by him to revise his quarterly returns in question within the period prescribed in section 24(7) of the 'VAT Act'. Obviously this has led to a mismatch and even though a recommendation is made at Annexures 5 and 4 respectively of the Deputy Commissioner, Commercial Taxes but it has not resulted in a decision in favour of the petitioner because as per the system of online generation of Form ‘F’, in view of the incorrect particulars present in the 2^{nd} and 3^{rd} quarterly returns submitted by the petitioner, until such time figures in those returns are corrected, there can be no corresponding generation of Form ‘F’ for the said quarters.

The stand taken by the State in their counter affidavit is that since the petitioner failed to revise his quarterly returns as per section 24(7) until expiry of the due date as defined in section 24(3) of the ‘VAT Act’ it cannot now be corrected.

In my opinion, the fault is entirely of the petitioner in being casual in his approach in so far as the claim of stock transfer is concerned. The pleadings on record would confirm that the issue relates to the financial year 2012-13. The chart present under paragraph 7 of the counter affidavit shows that the petitioner has filed his quarterly returns in time except that the 2^{nd} quarterly returns was a bit delayed. The petitioner also filed his annual returns within time together with the tax audit report and though the petitioner claims to have corrected the figures of stock transfer while filing his annual returns but even at that stage the petitioner took no step to file revised returns in respect of 2^{nd} and 3^{rd} quarters.

I would straightaway refer to the provisions of section 24(7) of the 'VAT Act' which, inter alia, enables a dealer who having filed his quarterly returns, to furnish a revise return or statement if he discovers any omission or wrong statement therein at any time before the due date within the meaning of section 24(3) which in the case of the petitioner would be 31.12.2013. Now even though the petitioner filed his annual return much before the due date on 20.11.2013 yet he never bothered to revise his 2nd and 3rd quarterly returns in tune with the annual returns. In fact the petitioner went into a slumber on the issue to be awaken after a lapse of almost 4 years to file this writ petition on 01.11.2017 for the claims raised above and there is no explanation for this save and except the correspondence entered in between the petitioner and the Commercial Taxes department.

The issue is that even if, the State in its different circulars has laid down the procedure to cause rectification of any error occurring in Form 'F' so generated, the case in hand is totally on different pedestal for the very particulars which the petitioner wishes to enter in the Form 'F' for the 2nd and 3rd quarters of the financial year 2012-13 is not in tune with the returns filed for the said quarters. Had it been a case where the petitioner while filing his annual return for the financial year 2012-13 also filed revised returns for the 2nd and 3rd quarters the issue would be different but the petitioner having gone into slumber to discharge his obligation within the period provided under section 24(7) of the 'VAT Act' is awakening after a lapse of almost 4 years thereafter. This lapse definitely would not persuade this Court to grant indulgence on the statutory claim which apart from lacking in merits also suffers from laches and the correspondences that may be relied upon by the petitioner would be of no aid in justification of the lapse.

The provisions discussed leave no room for confusion that an onus is cast upon the transferee-dealer to generate Form 'F' by filling up the particulars of the stocks received by him from its branches outside the State and for such purpose the transferee-dealer has to fill up the correct figures in the returns so filed in each quarters and not in casual manner.

In the present case the petitioner has not only defaulted in furnishing correct particulars for the 2nd and 3rd quarters for the period 2012-13 but also failed to file a revised return within the prescribed time although he claims to have corrected the details of stock transfer in his annual return.

In such view of the matter the prayer seeking direction to the Commercial Taxes department to permit him to generate Form 'F' on the basis of the figures present in the annual returns cannot be accepted for apart from the fact that the fault is entirely attributable to the petitioner, Section 6A of the 'CST Act' makes it clear that if the burden of establishing such stock transfer is not discharged by production of declaration form, the transfer is to be treated as sale and the petitioner should have been aware of such consequences which are so eloquent on the statute book.

The writ petition is dismissed.

(Jyoti Saran, J)

I agree
(Anjani Kumar Sharan, J.)

(Anjani Kumar Sharan, J)

skpathak/-

AFR/NAFR	AFR
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