IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.92 of 2017
In
Civil Writ Jurisdiction Case No.6379 of 2014

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1. The State of Bihar through The Principal Secretary Cum Commissioner, Department of Commercial Tax, Bihar, Patna
2. The Deputy Commissioner of Commercial Taxes, Patliputra Circle, Pant Bhawan, Bailey Road Patna.

... ..Respondents/Petitioner

Versus

The Food Corporation of India, 16-20, Barakhambha Lane, New Delhi having its Regional Office at Arunachal Bhawan, Exhibition Road, Bihar, Patna-800001, through Sri Amresh Kumar, Deputy General Manager ® Bihar Region son of Sri Ranjit Singh, resident of 104, Raj Enclave, Road No. 5C, North S.K.Puri, Patna-800013

... ..Petitioner/Opposite party

Appearance :
For the Petitioner/s : Mr.Bishwa Bibhuti Kumar Singh
For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 27-02-2019

Heard learned counsel for the parties.

2. The respondents of CWJC No. 6379 of 2014 have filed the instant application under Article 226 of the Constitution of India, read with Order XLVII Rule 1 of the Code of Civil Procedure, seeking review of the judgment and order dated 19.07.2016, passed in the writ petition, whereby, while allowing the writ petition, this Court had observed that the tax as well as the additional tax paid by the writ petitioner on purchase of paddy in the State of

Bihar, shall be liable to be reduced from the tax as well as additional tax on the sale of rice procured from such paddy inside the State.

3. The brief facts of the case are that the writ petitioner had challenged the validity of Section 16 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the VAT Act, 2005') as ultra vires the provisions of Section 15 of the Central Sales Tax Act, 1956 (hereinafter referred to as 'the Sales Tax Act, 1956'), read with Article 286 of the Constitution of India inasmuch as the same did not allow credit of additional tax paid on paddy under Section 3AA of the VAT Act, 2005, which, upon conversion into rice, was sold both within and outside the State of Bihar. The writ petitioner had pleaded that refusal to allow the set off of additional tax imposed under Section 3AA of the VAT Act, 2005 on the purchase of paddy from the output tax liability from sale of rice procured from such paddy, would make the said goods of special importance be subjected to tax @ 7% which will be ultra vires Section 15 (a) of the Sales Tax Act, 1956, which prescribes the limit of tax liability on goods of special importance to a maximum of 4%. Therefore, not providing set off of additional tax paid

on purchase of paddy from the output tax liability on the sale of rice, would make the said declared goods suffer tax twice making the same costlier as the writ petitioner would be paying 4% tax on the purchase of paddy and would be paying 4% tax on the sale of rice procured from such paddy.

4. The respondents contested the writ petition. It had pleaded that Section 3AA of the VAT Act, 2005 provides for levy of additional tax, which cannot be considered to be tax. Therefore, the same cannot be claimed as input tax. The restriction imposed by Section 15 (c) of the Sales Tax Act, 1956, governs only the tax and not the additional tax. Therefore, the validity of Section 16 of the VAT Act, 2005, cannot be assailed on the ground that the same does not allow the set off of the additional tax paid as per Section 3AA of the VAT Act, 2005 on purchase of paddy from tax and additional tax payable on sale of rice procured from such paddy purchased from the State.

5. Having noticed the submissions made by the parties, relevant provisions of statutes of the VAT Act, 2005, the Sales Tax Act, 1956 and the ratio laid down by the Apex Court in its line of decisions, this Court, vide its judgment

and order dated 19.07.2016 under review concluded as under:-

> “69. In the backdrop of the position of law as discussed above, there can be no escape from the conclusion that in order to save a statute from being unconstitutional, the Court may have to read down the provisions of a statute to make it constitutional.
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> 70. In order to, therefore, save Section 16 of the Bihar VAT Act, 2005, from being rendered unconstitutional, we have no other alternative, but to read down the provisions of Section 16 of the Act of 2005, and, therefore, we hold that Section 16 of the Act of 2005 shall be read so as to allow input tax credit of not only the tax levied, but also additional tax levied under Section 3AA of the Act of 2005.
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> 71. In the result and for the reasons discussed above, the tax as well as additional tax, paid by the petitioner on purchase of paddy in the State of Bihar, shall be liable to be reduced from the tax as well as additional tax on the sale of rice procured from such paddy inside the State.”

6. Learned counsel for the review petitioners submitted that on the basis of the above judgment and order, the writ petitioner filed an application for refund of Rs.54,30,36,368.00 for the period 2007-08 to 2010-11 before the Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna. The Assessing Officer examined the records and returns filed by the writ petitioner for the period 2007-08 to 2010-11 and found that it had misled the Court and misrepresented the facts that it had paid purchase tax on purchase of paddy on account of VAT @ 1% and additional tax @ 3%, because no such tax had been deposited by it. He pleaded that the amount of input tax credit claimed by the writ petitioner in returns of the above period was only imaginary figure and no amount of purchase tax on account of VAT and additional tax had been paid by the writ petitioner on the purchase of paddy. He argued that since no amount of purchase tax on account of VAT and additional tax had been paid, the observation made in paragraph 71 of the judgment and order under review that the tax as well as the additional tax paid by the writ petitioner on purchase of paddy in the State of Bihar shall be liable to be reduced from the tax as well as

additional tax on the sale of rice procured from such paddy inside the State, deserves to be reviewed and recalled.

7. After perusal of the judgment and order under review and considering the submissions made on behalf of the review petitioners, it is evident that no submission in respect of non-payment of purchase tax on account of VAT and additional tax by the review petitioners was made during the course of hearing of the writ application. It is not the case of the review petitioners that in the writ application these issues were pressed before the Court and it failed to consider the same. The review jurisdiction can be invoked only in cases of patent error and not for the purpose of hearing of the dispute on new grounds which were never pressed.

8. We fail to understand as to why this application for review has been filed by the review petitioners. The review petitioners are not aggrieved by the ratio laid down by the judgment under review. Their only grievance is that when a claim for refund was made for the period 2007-08 to 2010-11 by the writ petitioner, pursuant to the direction made in paragraph 71 of the judgment and order for reduction from the tax as well as additional tax paid by the

writ petitioner, upon examination, it came to a conclusion that no tax or additional tax was paid by the writ petitioner. As far as non-payment of tax and additional tax by the writ petitioner is concerned, there is no conclusive finding of the Court in this regard in the judgment and order under review.

9. Thus, we are of the opinion that no ground for reviewing the judgment and order dated 19.07.2016 is made out.

10. The application stands dismissed.

(Ashwani Kumar Singh, J)

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	Nil
Uploading Date	12. 03.2019
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