IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4143 of 2017

Berger Paints India Ltd., a company incorporated under the Companies Act, 1956 having its head office at Berger House, Park Street Kolkata and Branch Office at TPS compound, New Bye Pass Road, Anishabad, District Patna-18 through its authorized signatory Rajeev Kumar, son of Shri Satyanaryan Lal Das resident of House No. 125 S.K. Nagar P.O GPO, P.S. Buddha Colony, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Patna.
2. Assistant Commissioner of Commercial Taxes, Special Circle, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 4139 of 2017

Berger Paints India Ltd. a company incorporated under the Companies Act, 1956 having its head office at Berger House, Park Street Kolkata and Branch Office at TPS compound, New Bye Pass Road, Anishabad, District Patna-18 through its authorized signatory Rajeev Kumar, son of Shri Satyanaryan Lal Das resident of House No. 125 S.K. Nagar P.O GPO, P.S. Buddha Colony, District- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Patna.
2. Assistant Commissioner of Commercial Taxes, Special Circle, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 4236 of 2017

Berger Paints India Ltd.a company incorporated under the Companies Act, 1956 having its head office at Berger House, Park Street Kolkata and Branch Office at TPS compound, New Bye Pass Road, Anishabad, District Patna-18 through its authorized signatory Rajeev Kumar son of Shri Satyanarayan Lal Das resident of House No. 125 S.K. Nagar P.O GPO, P.S. Buddha Colony, District- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Patna.

2. Assistant Commissioner of Commercial Taxes, Special Circle, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 4319 of 2017

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Berger Paints India Ltd.a company incorporated under the Companies Act, 1956 having its head office at Berger House, Park Street Kolkata and Branch Office at TPS compound, New Bye Pass Road, Anishabad, District Patna-18 through its authorized signatory Rajeev Kumar son of Shri Satyanarayan Lal Das resident of House No. 125 S.K. Nagar P.O GPO, P.S. Buddha Colony, District- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Patna.
2. Assistant Commissioner of Commercial Taxes, Special Circle, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 4358 of 2017

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Berger Paints India Ltd.a company incorporated under the Companies Act, 1956 having its head office at Berger House, Park Street Kolkata and Branch Office at TPS compound, New Bye Pass Road, Anishabad, District Patna-18 through its authorized signatory Rajeev Kumar son of Shri Satyanarayan Lal Das resident of House No. 125 S.K. Nagar P.O GPO, P.S. Buddha Colony, District- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Patna.
2. Assistant Commissioner of Commercial Taxes, Special Circle, Patna.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 4143 of 2017)

For the Petitioner/s	:	Mr.D.V.Pathy, Adv.
	:	Mrs. Manju Jha, Adv.
	:	Mr. Sadashiv Tiwary, Adv.
For the Respondent/s	:	Mr.Vikash Kumar- Sc11

(In Civil Writ Jurisdiction Case No. 4139 of 2017)

For the Petitioner/s	:	Mr.D.V.Pathy
For the Respondent/s	:	Mr.Lalit Kishorepaag1

(In Civil Writ Jurisdiction Case No. 4236 of 2017)

For the Petitioner/s	:	Mr.D.V.Pathy

For the Respondent/s : Mr.Lalit Kishorepaag1
(In Civil Writ Jurisdiction Case No. 4319 of 2017)
For the Petitioner/s : Mr.D.V.Pathy
For the Respondent/s : Mr.Lalit Kishore -Paag1
(In Civil Writ Jurisdiction Case No. 4358 of 2017)
For the Petitioner/s : Mr.D.V.Pathy
For the Respondent/s : Mr.Lalit Kishorepaag1
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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

5 04-03-2020 Heard learned counsel for the petitioners and learned counsel for the respondents.

Petitioners have prayed for the following relief:-

> "(i) The order dated 28.02.2017 (as contained in Annexure- 3 series) passed by the respondent no.2 for the period 2010-11 under section 31 of the Bihar Value Added Tax Act, 2005 be quashed."

In support of his contention Mr. Pathy has relied upon the following three decisions rendered by a Coordinate Bench of this Court and one decision of Hon'ble Apex Court:-

(1) Order dated 11.08.2015 passed in C.W.J.C. No. 7436 of 2015 titled as United Wireless (Tamilnadu) Pvt. Limited Company Vs. The State of Bihar and Ors.

(2) Oder dated 29.03.2019 passed in C.W.J.C. No. 8485 of 2017 titled as M/s Pidilite Industries Limited Versus The State of Bihar and Others.

(3) order dated 05.03.2019 passed in C.W.J.C. No.

24431 of 2018 titled as M/s Tata Project Ltd. Versus The State of Bihar and Others.

(4) and also by the judgment passed by the Apex Court in case of State of Uttar Pradesh and Others Vs. Aryaverth Chawal Udyog and Others, reported in (2015) 17 Supreme Court Cases 324.

Yesterday, when the matter was taken up, even though, the order does not record, Sri Pathy focused on the none- issuance of the notice under Section 31(2) A of the Bihar VAT Act, 2005, He mainly argued that imposition of penalty, to the tune of Rs. 42 lacs, was in utter violation of principles of natural justice. In fact such proceedings went on for more than 20 minutes.

While disputing such fact, Sri Viksh Kumar who fairly assists the court, in these types of matters, requested that the matter be adjourned by one day, enabling him to place on record the notice issued by the authorities in that regard.

Today, Sri Vikash Kumar has placed on record an affidavit dated 4th of March, 2020 sworn by Sri Anup Kumar, Deputy Commissioner State Taxes Special Circle, Patna, wherein it stands recorded as under:-

> "3. That in present case counter affidavit has been filed on behalf of

answering respondents that the notice in prescribed form N-V has been served to the petitioner which contain the reasons as to why the notice has been issued, but in inadvertently the copy of notice in form N-V has not been annexed with the counter affidavit.

4. That by way of present affidavit, the answering respondents craves leave of the this Court to bring on record the copy of notice in prescribed form N-V issued under Section 31 of Bihar VAT Act, 2005, for period 2010-11 vide process No. 8330 dated 24.01.2017 by which it was intimated to petitioner that date of hearing is fixed on 06.02.2017 at 11.00 AM.

5. That it may be mentioned here that on appointed day of hearing, counsel appearing on behalf of petitioner filed petition for adjournment of matter and accordingly 28.02.2017 was date fixed for hearing.

6. That on 28.02.2017 petitioner appeared through its counsel and after hearing the petitioner, the impugned order dated 28.02.2017 was passed by the Authority."

We find that the submission made yesterday on behalf of petitioners were absolutely incorrect, and if not, false. We need not say anything further than that.

Coming to the other aspects, we notice that the petitioner has got equally efficacious and alternative remedy, which is by way of statutory appeal under the provisions of the Bihar VAT Act.

Whether the challenge is to the notice in the proceedings or other issue are all issues which can be raised before the appropriate Appellate Authority under the VAT Act.

In fact, Sri Vikash Kumar invites our attention to the decision referred by the Apex Court in the case of *Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, reported in (2014) Supreme Court Cases 603 w*herein the court emphasized the need of the writ petitioners in exhausting alternative remedies, elaborately discussing the scope which the Writ Court under Article 226 of the Constitution should exercise its jurisdiction.

We do not find the instant case to be one in which this Court should exercise its jurisdiction, more so, in disputed questions of fact, which this Court finds, can be best adjudicated by the Appellate Authority.

As such, we vacate the interim order dated 27th of March, 2017 and direct the petitioner to take recourse to such remedies as are otherwise available in accordance with law.

The instant petition stands disposed off in the aforesaid terms.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv/-

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