IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6498 of 2011

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Jay Pee Rewa Cement now known as Jaiprakash Associates Limited, A Company Registered under the Indian Companies Act, 1956, having its registered office at G Block, Surajpur Kasna Road, Greater Noida City (Uttar Pradesh) and having its marketing office at Ashiana Chambers, 5th Floor, Exhibition Road, Patna (Bihar) through its General Manager (Finance) B. Sarkar S/O Late Manoranjan Sarkar, R/o 403, Om Raj Apartment, Jamal Road, Patna-1

... ... Petitioner/s

Versus

1. The State of Bihar through its the Chief Secretary, Govt. of Bihar, Patna.
2. The Commissioner, Commercial Taxes, Bihar, Patna
3. The Joint Commissioner, Commercial Taxes, (Appeals) Central Division, Patna
4. The Deputy Commissioner, Commercial Taxes, Special Circle, Patna

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Mrigank Mauli, Advocate
For the Respondent/s : Mr. Lalit Kishor, A.G.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-12-2020

The petitioner has prayed for following relief(s):

"(i) For issuance of writ in the nature of certiorari quashing the order of assessment dated 30.09.1996 passed by the assessing authority, Viz., Deputy Commissioner Commercial Taxes, Special Circle, Patna (Respondent No. 4) for the period 1994-95 as contained in Annexure I and order dated 31.01.1997 passed by the Joint Commissioner Commercial Taxes (Appeals) Central Division, Patna (Respondent No. 3) as contained in Annexure 2 vide which Appeal No. ST-SL/39/9697 has been dismissed and to further quash order dated 22.01.2010 passed in Revision Case No. PT- 67/97 by the Commercial Taxes Tribunal, Bihar, Patna as contained in Annexure 3 by which revision preferred by the petitioner has been dismissed.

(ii) For issuance of writ in the nature of mandamus directing the respondent authorities to refund the amount of Rs 29,43,942/- which has been realized by the respondent authorities as being the tax upon the packing material which was subsequently assessed at the rate of 11% being the rate of tax on cement

(iii) For issuance of direction to give effect to the provisions of Section 2 of Bihar Ordinance No. 3 of 2002 prospectively and to refund the amount which the petitioner had been forced to pay on account of tax being levied on packing materials at the same rate as Cement.

(iv) To grant any other relief(s) to which the petitioner is entitled to in the facts and circumstances of the case.

2. With respect to the financial year 1994-95, proceedings for re-assessment were initiated. The Re-assessment proceeding initiated under the provisions of Section 19 of the Bihar Finance Act, 1981 (hereinafter referred to as the Act) culminated with passing of the order dated 30.9.1996.

3. Aggrieved thereof, the petitioner's appeal bearing Appeal Case no. ST/SL39 of 1996-97 titled as **M/s Jay Pee Rewa Cement Versus the State of Bihar**, so preferred,

stood dismissed by the appellate authority vide order dated 31^{st} of January, 1997 and same dated order in appeal (case no. Misc-Revision No. 1/96-97) confirming the lower court order.

4. Aggrieved thereof, the petitioner preferred Revision Case Nos. PT-67/97 and PT-68/97 titled as **M/s Jay Pee Rewa Cement Versus the State of Bihar** which stood dismissed on 22.01.2010 relying upon a judgment passed by the Tribunal on 30.03.2002 in the case of Associated Cement Company Vs. State of Bihar in Revision Case No. PT-552 to 557 of 1997.

5. Noticeably, the appellate authority, on a limited issue, has remanded the matter to the Assessing Officer for consideration afresh, which proceedings, as we understand, are pending.

6. Independently, assailing the order passed by the Tribunal, petitioner has preferred the present petition filed under Article 226 of the Constitution of India.

7. Before this Court, the petitioner raised four issues:-

(i) The order of reassessment is bad in law inasmuch as there was no independent material/information available with the Assessing Authority, warranting re-assessment under the provisions of Section 19(1) of the Act;

(ii) The Assessing Officer in the re-assessment proceedings erroneously carried out the assessment on composite basis. Such assessment ought to have been done separately, in terms of Notification no. 14545 dated 26th of December, 1977, wherein the incidence of tax on item 'cement' was notified to be 11% leviable as such, and Notification No. SO No. 1020 dated 23rd of August, 1984 whereby the incidence of tax leviable on the gunny bags was to be at the rate of 4%. Such assessment on composite basis is as a result of the amending statute i.e., The Bihar Taxation Law (Amendment and Validation) Act 2002, validating the incidence of tax on retrospective basis;

(iii) The assessing officer as also the authority below erred in ignoring the material pertaining to the discount (trade-discount) allowed by the petitioner to its vendors. It is on this issue, with respect to certain years, matter stands remanded to the Assessing Officer.

(iv) The initiation of proceedings for imposition of penalty and passing an order in terms of Section 25(3) of the Act, based solely on the order of re-assessment is bad in law.

8. We have heard the parties at length and after

some time, finding the Court not to be in favour on the principle, i.e. the first issue - the action of the authority in initiating proceedings for re-assessment under Section 19(1) of the Act without any material, withdrew such plea, with a further request of the matter being remanded to the Assessing Officer, more so in view of such order of remand with respect to certain financial years already made by the Appellate Authority, wherein, transactions identical in nature took place.

9. Effectively, what the petitioner desires to do is (a) give up plea no.(i) of there being no independent material/information available with the assessing authority prompting initiation of proceedings for re-assessment under Section 19(1) of the Act; (b) the matter be remanded to the Assessing Officer for consideration afresh on issue no.(ii)- whether imposition of tax is to be on the basis of composite or separate sale; non-accounting of trade discount; and imposition of penalty.

10. Shri A. K. Rostogi, learned counsel for Revenue, under instructions, agrees with such submission made on behalf of the petitioner, with the condition that this Court may expedite the hearing with a direction to the Assessing Officer to decide the issue at the earliest and the petitioner fully

co-operating in producing material, if any, in support of its plea. He clarifies that order of reassessment is independent of the amending Act.

11. Under instructions, Shri R. K. Agrawal, learned counsel for the petitioner, agrees for such suggestion made by Shri A. K. Rostogi, learned counsel for the Revenue.

12. No other point is raised by learned counsel for the parties.

13. As such, the present petition is disposed of on the following mutually agreeable terms:-

(a) Impugned order dated 22.01.2010 passed in Revision Case Nos. PT-67/97 and PT-68/97 titled as **M/s Jay Pee Rewa Cement Versus the State of Bihar** passed by the Commercial Taxes Tribunal, Bihar, Patna and the appellate order dated 31.1.1997 passed in Appeal Case No.ST/SL/39 of 96-97 passed by Joint Commissioner, Commercial Taxes (Appeal) Central Division upholding the order dated 30.09.1996 passed by the Deputy Commissioner, Commercial Taxes, Special Circle, Patna are quashed and set aside.

(b) The matter is remanded back to the Assessing Authority for consideration afresh;

(c) The parties undertake to fully co-operate and not take any unnecessary adjournment;

(d) They undertake to appear before the Assessing Officer/Assessing Authority under the provisions of the Act on 14th of December, 2020 when a date shall be fixed, enabling the parties to produce material, if any, in support of their contention(s);

(e) Not more than two opportunities shall be afforded to the petitioner/Respondent to place the material in support of their contention(s);

(f) Since the petitioner has given up the plea of non-maintainability of proceedings for re-assessment under Section 19(1) of the Act, the Authority would not be required to examine such aspect.

(g) The hearing, if so required, shall be conducted through a virtual mode and positively concluded within the current financial year i.e. before 31st of March 2021;

(h) Since the petitioner has already deposited the component of tax as per the current assessment, no further tax is due and payable to the revenue, as such matters can be heard and decided;

(i) The authority shall pass order on merits, assigning reasons, copy whereof, shall be supplied to the parties.

(j) Liberty reserved to the parties to challenge the same, if so required and desired, in accordance with law.

The writ petition stands allowed in the above terms.

Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	09.12.2020
Transmission Date	