IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2043 of 2019

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Kalpataru Power Transmission Ltd. S/o Shri Govindbhai Shah a Company incorporated under the Companies Act having its office at Nageshwar Colony, Boring Road, Patna through its General Manager Jayendrbhai Shah, resident of B/4 Parth Apartment, Plot No.09, Sector 28, P.O. and P.S. Gandhi Nagar, Gujrat.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its Office at Vikas Bhawan, Patna.
2. Addl. Commissioner of State Taxes, Administration, Central Division, Patna.
3. Commercial Taxes Officer, Patliputra Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.V. Pathy, Advocate
	:	Mr. Rakesh Kumar, Advocate
	:	Mrs. Manju Jha, Advocate
For the Respondent/s	:	Mr.Anil Kumar Sinha (G.A.1)

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

Date : 09-03-2021

Heard the parties.

Petitioner has prayed for following reliefs:-

> "(i) the notice dated 06.12.2018 (as contained in Annexure-7) issued by the respondent no. 3 for the period 2016-17 under Section 76 of the Bihar Value Added Tax Act, 2005 be quashed.
>
> (ii) the order dated 03.12.2018 (as contained in Annexure-

> 6 series) passed by the respondent no. 2 directing the respondent no. 3 to reconsider his earlier order be quashed.
>
> (iii) for granting any other relief(s) to which the petitioner is otherwise found entitled to."

To our mind, the exercise of power by an Officer under Section 76 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the VAT Act) is apparently erroneous and illegal for the same to have been done on the asking of a Superior Officer who exercised his power under Section 74 of the VAT Act.

We find that the facts are short and simple.

With respect to assessment proceeding for the assessment year 2016-17, the Assessing Officer passed his order dated 26th July 2018 (page-33). In terms of the said order petitioner was entitled to refund of an amount of Rs.3,42, 58, 866/-. In terms of Chapter 11, Section 68 of the VAT Act, petitioner filed an application seeking refund of this amount.

Thus far, everything was fine, both for the revenue as also the petitioner.

It is only when the application for refund under process was pressed, that the superior authority, in exercise of its power under Section 74 of the VAT Act, vide order dated 3rd December, 2018 directed an authority, though Subordinate to it, but otherwise the only competent one i.e. the Assessing Officer, to "re-consider" the order of assessment, which undisputedly is dated 26th of July, 2018. Significantly prior thereto, as per record, the said officer's comments were also called for, in which, he had, in fact justified passing his order. But we are not commenting on the conduct of the Superior Authority, save and except emphasize that the procedure adopted by him, in exercise of his power under Section 74 was wholly illegal, arbitrary, capricious and in violation of settled principles of law. If the comments of the Assessing Officer were called for, it was all the more necessary for a copy thereof supplied to the petitioner, as also invite attention calling for response thereto.

The Superior Officer in exercise of its power could have quashed and set aside the order but not issued direction asking the Assessing Authority to "re-consider" its decision.

In fact, the statute itself mandates the Superior Officer to pass an order, under Section 74 of the VAT Act only after affording opportunity of hearing to all concerned, including the dealer, which in the instant case is the petitioner.

In support of the impugned action, Sri Vikash Kumar, S.C. 11 invites our attention to the provisions of Section 76 of the Act. In terms of the said Section undisputedly the Assessing Officer, has the power of review, more so for correcting the mistakes, arising on account of error apparent on the face of the record, but then the exercise of such power has to be bonafide and upon self satisfaction and not on the asking of a Superior Authority. Such power has to be exercised independently, based on the attending facts and circumstances, warranting initiation of such an action.

As such, we are constrained to quash and set aside the impugned notice dated 6th December, 2018 issued under Section 76 of the Act, with a further direction to the authority having exercised its power under Section 74 of the Act to pass a fresh order after affording opportunity of hearing to all concerned. We also quash and set aside the consequent order dated 3rd December, 2018 passed by Respondent No. 2 Addl. Commissioner Sales Tax (Annexure- 6 series).

Since the matter pertains to the proceedings with respect to the year 2016-17, we direct the petitioner to appear before the competent authority i.e. the Commissioner or any other nominated/authorised officer as per law, on 23.03.2021 at 10:30 A.M. on which date, the entire material shall be supplied to the petitioner enabling him to respond to the same in writing.

We further direct the authority to conclude the proceedings expeditiously and preferably within a period of two months thereafter.

Petition stands allowed with no order as to costs.

Interlocutory Application(s), if any, also stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.03.2021
Transmission Date	NA