

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14709 of 2019

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M/s ITC Limited, a company registered under the Companies Act, 2013 (CIN No. L16005WB1910PLC001985) having its corporate and registered office at Virginia House, 37 J.L.Nehru Road, Kolkata-700071 and carrying on business at Basdeopur, in the town and district of Munger-811202 through its authorised signatory Bannahalli Siddegowda Adarsh, Male, aged about 41 years, son of Sri Boraiah Siddegowda, resident of P.O Basdeopur, in the town and district of Munger, Bihar 811202.

... .. Petitioner/s

Versus

1. State of Bihar through the Principal Secretary-cum-Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
2. The Commissioner of Commercial Taxes, Bihar, Patna.
3. Joint Commissioner of State Tax, Munger Circle, Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. D. V. Pathy, Advocate
Mr. Rohitabh Das, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
C.A.V. JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date: 06-05-2021

The following question of law arises for consideration in the present case:-

Whether the order passed under Section 20(1) (a) of the Bihar Finance Act, 1981 (Referred to as the Act) imposing a levy of penalty is illegal and invalid given the



bar of limitation stipulated under Section 24 of the said Act or not?

2. Petitioner prayed for the following reliefs:-

- “A. To quash (Annexure-3) being the fresh penalty order dated 30.3.2019, imposing a penalty of Rs.40,81,963/, passed by the respondent no.3 u/s 20(1) (a) of the Bihar Finance Act, 1981 for short (the Act) for the A.Y.1997-98, in pursuance of the JCCT (A)’s order dated 7.1.2020 in Appeal No.MGST-18/2001-2002 as confirmed and modified by the Commercial Taxes Tribunal, Bihar, Patna vide its order dated 26.4.2017 passed in Rev. Case No.114 of 2002, which is wholly arbitrary, illegal and without jurisdiction and sanction of law besides also being in violation of the provisions of sec 20(1) (a) and is thus unsustainable in law.
- B. To quash (Ann-4) being the consequential notice of demand for Rs.40,81,963/- made in pursuance of Ann-3 received on 17.05.2019 by e-mail.”

3. The impugned order dated 30th March 2019, Annexure-3, is passed in exercise of power under Section 20 of the Act, and the consequential demand in terms of Form XVII is dated 30th March 2019 (Annexure-4).

4. Before us, challenge, restricted in nature, is only on the ground of limitation, for the action of passing an order of the assessment under an order of remand, completed after a period of 13 years, is beyond the prescribed period of limitation stipulated under Section 24 of the Act. In support of his contention, Sri D. V. Pathy, learned counsel for the petitioner, places reliance on the



decision of the Hon'ble Apex Court in **State of Jharkhand and others Versus Voltas Ltd., East Singhbhum, (2007) 9 SCC 266.**

5. On the other hand, Sri Vikash Kumar, learned counsel appearing for the Revenue, emphasised such plea to be wholly unsustainable in law.

6. Firstly, we proceed to examine the provisions of the Act.

7. The Bihar Finance Act, 1981(The Act) was enacted to consolidate and amend the laws relating to the levy of tax on the sale and purchase of goods in Bihar.

8. Section 2 being the definition clause *inter alia*, defines what is (i) business [2(b)]; (ii) dealer [2(e)]; (iii) declared goods [2(f)]; (iv) goods [2(h)]; and (v) registered dealer [2(s)].

9. It is not in dispute that the petitioner and its business activities, of trade and business in the State of Bihar, are subjected under the Act's provisions.

10. Under Section 16, a registered dealer or a dealer is mandatorily liable to pay tax and furnish an accurate and complete return regarding all his transactions falling within the Act's purview.

11. Under Section 17, the prescribed authority is empowered to assess the amount of tax due to such a return.



12. Further, under Section 19, wherever the authority based upon information and satisfaction of existence of reasonable grounds of belief, the turnover of the assessee, *inter alia*, has escaped assessment, can carry out proceedings of assessment/re-assessment for determining the amount of tax due.

13. Additionally, under Section 20, upon satisfaction that a person falling within the purview of the Act has concealed any sales or purchases, intending to reduce the amount of tax or furnished *inter alia*, incorrect statement of turnover, then in addition to payment of tax the prescribed authority may determine the amount of “penalty” liable to be paid by the defaulter.

14. Since the impugned order stands passed under Section 20, we deem it appropriate to reproduce the said provision as under:-

“20. Escaped turnover detected before assessment.- (1) If the prescribed authority in the course of any proceeding or otherwise under this part is satisfied that any registered dealer or a dealer to whom grant of registration certificate has been refused under the third proviso to sub-section (2) of Section 14-

(a) has concealed any sales or purchases or any particulars thereof, with a view to reduce the amount of tax payable by him under this part, or

(b) has furnished incorrect statement of his turnover or incorrect particulars of his sales or purchases in the return furnished under sub-section (1) of Section 16 or otherwise.

The prescribed authority shall, after giving such a dealer an opportunity of being heard in the manner prescribed, by an order in writing direct that he shall in



addition to any tax which is or may be assessed under Section 17, pay by way of penalty, in a case falling in clause (a), sum not exceeding three times but not less than an amount equal to the amount of tax and in a case falling in clause (b), a sum not exceeding two times but not less than an amount equal to the amount of tax on the suppressed turnover or on concealed or incorrect particulars.

(2) The penalty under sub-section (1) may be imposed before completion of assessment, and for determining the amount of penalty, the prescribed authority may quantify the amount of tax provisionally in the prescribed manner.

(3) Any penalty imposed under sub-section (1) shall be without any prejudice to any action which is or may be taken under Section 49.”

15. Significantly this Section 20 does not stipulate any period of limitation for initiation or completion of such proceedings.

16. However, in contending the proceedings under the said Section to be initiated beyond the period of limitation, Sri Pathy, learned counsel for the petitioner, invites our attention to the provision of Section 24, reproduced as under:-

“24. Period of limitation for completion of assessment proceedings.- Except a proceeding under sub-section (5) of section 17, section 18 and sub-section (1) of section 19 no proceedings for assessment of the tax payable by a dealer under this part in respect of any period shall be initiated and completed except before the expiry of four years from the expiry of such period:

Provided that a proceeding for re-assessment in pursuance of or as a result of an order on appeal, revision and reference or review shall be initiated and completed before the expiry of two years from the date of communication of such order to the assessing authority.”

(Emphasis supplied)



17. Significantly, Section 24 of the Act does not refer to the word 'penalty' or mentions Section 20. Whether the period of limitation prescribed therein would also apply to proceedings initiated under Section 20 of the Act or not is an issue that is neither argued nor do we choose to decide and leave it open to be considered in an appropriate case. But then it has to be within reasonable period, depending upon facts and circumstances of each case. However, accounting for the period of limitation to be four/two years, as the prescribed case therein maybe, we proceed to decide the writ petition in the attending facts and circumstances.

18. The issue at hand concerns the assessment year 1997-98.

19. The Assessing Officer vide order dated 23.08.2001 completed the proceedings under Section 17(3) of the Act (Annexure P/11, page 102 of the paper book). The Appellate Authority vide its order dated 05.04.2002 (Annexure P-12, page 114 of the paper book) while setting aside such an order of assessment, remanded the matter for re-assessment to be carried out by the Assessing Officer. Significantly, assailing the very same order passed by the Appellate Authority, the petitioner itself preferred a petition for revision under Section 46 of the Act, which also stood dismissed by the Tribunal, i.e. the Commercial Taxes Tribunal, Bihar, Patna vide its order dated 09.03.2017 (P-13, page



117 of the paper book). It is a matter of record that the said order has attained finality. Significantly, none of these proceedings pertain to any order passed under Section 20 of the Act.

20. Whether the outcome of proceedings under Section 17 of the Act, carried out under an order of remand would have any bearing on the exercise of the power by the Authority under Section 20 or not is an issue not raised before us, as such we need not examine the same, more so, given the common stand of the parties that initiation and outcome of the proceedings under Section 20 is not dependent thereupon.

21. Proceeding further, we notice that action initiated by the Prescribed Authority, under Section 20 of the Act, stood culminated in the passing of the order dated 14.07.2001 by the appellate Authority (Annexure-8 page 78 of the paper book), with a sum of Rs.13,84,630.40 determined to be income concealed, thus warranting imposition of penalty amounting to Rs.41,53,891.20, upon the petitioner. This order, challenged by the petitioner, was set aside by the appellate authority, and the matter remanded to the assessing officer for consideration afresh in terms of order dated 07th January 2002 (Annexure-9, page -83). Significantly, in the year 2002 itself, the petitioner preferred a revision petition assailing the very same order (Annexure-9), which stood partly



allowed by the Commercial Tax Tribunal, Bihar vide its order dated 26th April 2017 (Annexure10, page 90 of paper book). The direction issued by the learned Joint Commissioner of Commercial Taxes (Appeal) directing examination of purchase and sale for the period other than the years in question for which the proceedings for imposition of penalty was held to be unsustainable. The operative portion of the order reads as:-

“Heard both side. Perused the Lower Court record, penalty order and order of the Appellate Court. We fully agree that the petitioner was not given proper opportunity of being heard by the Assessing Authority and therefore, setting aside the aforesaid order of penalty for passing a fresh order in accordance with the provisions of the Act by the appellate court does not require any interference, but at the same time directions given by the Id. Joint Commissioner of Commercial Taxes (Appeal) for examining in detail, purchase and sale of other years except the period for which order of penalty relates cannot be sustained.

7. In view of the above facts and circumstances of the case, the appellate order is modified accordingly in light of the observations made above.

8. This revision petition is allowed to the extent of above modification and remitted to Assessing authority to pass fresh order as per the provisions of the Act."

22. After the Tribunal passed this order, the Prescribed Authority under Section 20 of the Act has now passed a fresh order dated 30.03.2019 (Annexure-3), impugned herein.

23. Section 24 of the Act itself accounts for the orders passed in an appeal, revision, reference, or a review petition. The period of four years prescribed therein is subject to the proviso



stipulating such proceedings to be concluded within two years from the date of communication of such order to the Assessing Authority.

24. It is not the petitioner's case that commencing from the date of the passing of the order of remittance by the Tribunal; the Assessing Authority did not conclude the proceedings within a period of two years.

25. Having assailed the very same order remitting the matter to the assessing authority, it would not lie in the mouth of the petitioner to now contend that pursuant to the passing of an order of remand by the appellate authority, notwithstanding the pendency of the proceedings before the Tribunal, the Assessing Authority ought to have completed the proceedings within a period of two years. Hence, to contend the action to be beyond the period of limitation is absolutely fallacious and legally unsustainable. Petitioner himself allowed the proceedings to be procrastinated by not pursuing early disposal.

26. In **Bimal Kumar v. Shakuntala Debi, (2012) 3 SCC 548, para 37**, the Apex Court, while dealing with the issue of limitation of execution of a decree passed by a Civil Court, observed that a decree would immediately become executable and only the time consumed in pursuing the appeal would be excluded



for computation of the period of limitation under Article 136 of the Limitation Act, 1963 (Referred to as the Limitation Act). However, it clarified that such a position would arise if the execution is interdicted by passing of orders, staying operation of the decree by an appellate Court. In the absence of any such interdiction, the decree-holder would be entitled to have the decree executed immediately. The Court was dealing with a case where the party pleaded exclusion of the period spent for engrossing the decree on the stamp paper. In view of Article 136 of the Limitation Act, the contention stood repelled for the decree became executable and enforceable immediately with its passing, notably when the party claiming such benefit failed to exhibit any other circumstance interdicting execution thereof.

27. In examining the issue as to whether the dismissal of the petition by the Court in *limine*, filed under the extraordinary original civil jurisdiction (Article 226 of the Constitution), can be said to be an order for the purposes of appeal under Article 133 of the Constitution of India, the Apex Court (Five Judge Bench) in **Ramesh v. Seth Gendalal Motilal Patni, AIR 1966 SC 1445** while dealing with the statute in question, affecting civil rights of the contending party, held that the order passed by the High Court even rejecting the petition in *limine* to be adversely affecting the



rights of the parties, making it no difference whether the order passed was speaking or not, for it would constitute an order passed by the High Court about civil matters against which an appeal, under an appellate jurisdiction would lie to the Supreme Court.

28. Yet again, the apex court in **Union of India v. West Coast Paper Mills Ltd., (2004) 2 SCC 747**, dealing with the issue as also the principle that an appeal is a continuation of the suit, clarified that under the ordinary civil law, the judgment of the appellate court alone could be put to execution having regard to the doctrine of the merger as per the principles laid down by the Constitution Bench (Five-Judge Bench) of the Apex Court in **S.S. Rathore v. State of M.P., (1989) 4 SCC 582**.

29. However, while dealing with the issue of revisional jurisdiction, not under Section 115 of the Code of Civil Procedure, but a specified particular statute about tenancy laws, the Apex Court in **Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh (2014) 9 SCC 78**, clarified that while exercising power in examining the legality or the propriety of the order passed by the authority below, including the appellate authority, the revisional Court does not function and exercise its power as the second Court of the first appeal.



30. The revisional jurisdiction is distinct and separate from that of appellate jurisdiction, and continuation of a revision cannot be said to be an appeal.

31. In **Karnataka Housing Board v. K.A. Nagamani, (2019) 6 SCC 424**, the Apex Court discussed the distinction between “appellate jurisdiction” and “revisional jurisdiction”. It held that ordinarily, the power of revision could be exercised only when illegality, irrationality, or impropriety is found in the decision-making process of the fora below. Further, "Appeal" and "revision" are expressions of common usage in Indian statute and the distinction between "appellate jurisdiction" and "revisional jurisdiction" is well known though not well defined. Ordinarily, appellate jurisdiction involves a rehearing, as it were, on the law as well as fact and is invoked by an aggrieved person. Ordinarily, again, revisional jurisdiction is analogous to the power of superintendence and may sometimes be exercised even without it being invoked by a party. The extent of revisional jurisdiction is defined by the statute conferring such jurisdiction. The conferment of revisional jurisdiction is generally to keep tribunals subordinate to the revising Tribunal within the bounds of their authority to make them act according to law, according to the procedure established by law, and according to well-defined principles of



justice. Also, conceptually, revisional jurisdiction is a part of appellate jurisdiction, but it is not vice versa. Both appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is a continuation of suit or original proceeding, as the case may be. The power of the appellate court is co-extensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law, but such jurisdiction may be limited by the statute itself that provides for appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction, but ordinarily, it cannot be equated with that of a full-fledged appeal. In other words, revision is not a continuation of suit or of the original proceeding. When the aid of revisional court is invoked on the revisional side, it can interfere within the proper parameters provided in the statute. [**Also *Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar*, (1980) 4 SCC 259, *Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh*, (2014) 9 SCC 78**].

32. The Apex Court in **Commissioner of Income Tax, Chennai v. Alagendran Finance Ltd.**, (2007) 7 SCC 215 observed that where the subject matter of re-assessment and subject matter of assessment was not the same, the doctrine of merger would not apply.



33. In **Khemka & Co. (Agencies) (P) Ltd. v. State of Maharashtra, (1975) 2 SCC 22**, the Apex Court observed as under:-

“**25.** Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act. Reference may be made to Section 28 of the Indian Income Tax Act, 1922 where penalty is provided for concealment of income. Penalty is in addition to the amount of income tax. This Court in *Jain Brothers v. Union of India* [(1970) 77 ITR 107: (1969) 3 SCC 311] said that penalty is not a continuation of assessment proceedings and that penalty partakes of the character of additional tax.”

34. The principles mentioned earlier are applied to the attending facts and circumstances. We have already returned our findings in paragraphs 23, 24 and 25 supra, which we elaborate hereinunder.

35. In the instant case, the petitioner alone assailed the very same order passed by the appellate authority whereby the matter stood remanded to the assessing authority. The challenge in the revision petition was not limited only to the expansion of the scope of remand for consideration of assessment years other than the one's subject matter of scrutiny under Section 20 by the Assessing Officer. It was on a wholesome basis. As per the petitioner, the appellate authority ought to have allowed the appeal in toto and not remanded the matter for consideration afresh.



36. The record placed before us does not indicate whether the revisional authority had passed any interim order staying proceedings before the assessing authority.

37. Be that as it may, such an outcome would not have any bearing in the adjudication of the issue, in the petitioner's favour for the following reasons:- (a) petitioner had laid challenge to the order passed by the appellate authority remanding the matter to the assessing officer; (b) petitioner did not take any steps seeking an interdiction of such proceedings or expediting the revision petition within the stipulated period of limitation; (c) petitioner allowed both sets of proceedings to be procrastinated; (d) It is a settled principle of law that Rules of Limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. [**Bimal Kumar (Supra) para 37**]; (e) above all and independent of the same, proviso to Section 24 itself postulates a situation where the revisional authority passes the order. And in terms thereof, unlike the main provision, proceedings of re-assessment are to be completed within two and not four years, from the date of communication of the order passed by the Revisional Authority to the Assessing Authority, which was so done in the instant case.



38. The Apex Court in **Collector of Customs v. Digvijaysinhji Spg. & Wvg. Mills Ltd., AIR 1961 SC 1549**

observed as under:-

“It is one of the well-established Rules of construction that "if the words of a statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature". It is an equally well-settled principle of construction that "Where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system".

39. We are taking note of Section 24 of the Act and applying the principles of interpretation as reproduced immediately hereinabove, we are of the considered view that the period of limitation applicable would not be four but two years, commencing from the date of communication to the assessing authority of the order passed by the revisional authority.

40. We clarify that the Statute, i.e. Proviso to Section 24 itself, is very clear. It includes an order passed in a revision, in addition to an order passed in any appeal, reference or review.

41. Reliance on the decision of Hon'ble the Apex Court in **Vlotas Ltd., East Singhbhum** (supra) is misconceived, and in any event distinguishable on facts, for the Apex Court was dealing with



a case as is evident from paragraph 16 of the report where under the order of remand, the authority did not take any step for completing the proceedings. No proceedings assailing the very same order of remand were pending before any Higher Authority.

42. Thus, weighing from all angles, we find the submissions made by the learned counsel to be wholly unsustainable in law.

43. The question of law is answered accordingly. The order passed under Section 20(1) (a) of the Act imposing a levy of penalty cannot be illegal and invalid given the bar of limitation stipulated under Section 24 of the Act.

44. For all the reasons above, the writ petition stands dismissed.

45. Interlocutory application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

S. Kumar, J. I agree.

(S. Kumar, J)

Amrendra

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