IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.250 of 2011

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Bata India Limited, a company incorporated under the Companies Act 1956 having its office at Bata Ganj, P.O and P.S Digha through its manage (Accounts) Sunil Kumar Mishra son of Shri. Awadh Narayan Mishra resident of Vivekananda Park, South East Patliputra Colony, P.O. and P.S Patlipura Colony, Patna

... ... Appellant/s

Versus

1. Commissioner Of Commercial Taxes, Bihar Patna having its office at Vikash Bhawan, Patna

2. Joint Commissioner of Commercial Taxes (Appeals), Patna having its office at Pant Bhawan Boring Road, Patna

3. The Assistant Commissioner of Commercial Taxes, Special Circle, Gandhi Maidan Patna

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. D.V.Pathy, Adv

For The Respondent/S : Mr.Lalit Kishor AAG1

Mr.Manish Kumar (GP4)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

7 07-12-2023 1. In the assessment order passed, ex-parte for reason only of the assesee having not cooperated; the gross turnover determined was Rs. 212,60,86,338.79/- after adding on

the stock-transfers which were not supported by statutory forms. The intra-state stock transfer of Rs. 9,81,60,466.00/- was determined as taxable turnover for reason of absence of statutory forms. With respect to the inter-state stock transfer, ther claim of Rs.91,81,48,435.07 was supported by 172 numbers of 'F' forms and the balance of Rs. 168,67,09,104 was decided to be considered in the Central Sales Tax assessment. An appeal was filed before the first Appellate Authority where the assessee claimed that there was a typing mistake in the inter-state transfer of stock, as seen from the returns and also produced Form D (V) with respect to the intra-state transfer. Insofar as the intra-state transfer, the forms were rejected on the ground that their branches were not registered.

2. The appellant had contended that as per SO 43 dated 02.07.2007 produced as Annexure -3, companies incorporated under the Companies Act, 1956 and engaged in the business of buying and selling goods in more than one State, are entitled to make a consolidated registration under the Deputy Commissioner of Commercial Taxes, Patna, Special Circle. It is also submitted that there is no reason for the separate branches to be registered within the State of Bihar, which, however, does not come out from the aforesaid notification. The appellant,

however, has a claim that the registration certificate issued itself shows the various branches.

3. We see that the Tribunal, the last fact-finding authority has merely referred to the appellate order to affirm the assessment with respect to the intra-state stock transfer made addition of, coming to Rs. 9,81,60,466.00. The last fact-finding authority having not dealt with facts or made any adjudication, especially when the question arising is on facts; the availability of statutory forms, we are of the opinion that it requires a re-look.

4. The impugned order of the Tribunal is set aside and we cannot but observe that it is not proper for the Tribunal to merely affirm the order of the first Appellate Authority, especially when it is a fact finding authority which has to look at the various aspects raised in appeal and argued by the assessee before the Tribunal.

5. The M.A is disposed of.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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