IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.713 of 2008

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M/S JYOTHY LABORATORIES LIMITED, Registered Office 43, Shiv Shakthi Industrial Estate, Marol, Andheri, Kurla Road, Mumbai-4000059. Having Sales Depot at: 305, Hem Plaza Fraser Road, Patna 800001, through the authorised signatory Mr. Ajay Kumar Thakur.

... ... Appellant/s

Versus

1. STATE OF BIHAR through Secretary, Commercial Taxes Govt. of Bihar.
2. Joint Commissioner (Appeal), Department of Commercial Taxes, Central Division, Patna.
3. Commercial Tax Officer, Patliputra Circle, Patna
4. Deputy Commissioner, Commercial Taxes, Patliputra Circle, Patna.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. S.D. Sanjay, Sr. Advocate
Mrs. Priya Gupta, Advocate
Mr. Lokesh Kumar, Advocate
Mr. P.K.Mishra, Advocate
Mr. Vishal Kumar, Advocate
Mr. Kunal Kapoor, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-09-2023

1. An issue of lesser rate of tax for a product manufactured and sold by the assessee arise in this appeal. The question arose as to whether, the assessee's product comes under the 'industrial inputs' entitled to a lesser rate of tax.

2. The Hon'ble Supreme Court had considered the issue based on the **Kerala Value Added Tax Act, 2003 in M/S M.P. Agencies versus State of Kerala [(2015) 7 SCC 102].** Therein the question decided was whether 'Acid Violet Paste' which is

diluted, to manufacture the product can be classified under the Schedule of ‘industrial inputs’ which was answered by the Hon’ble Supreme Court in favour of the assessee; finding that the product manufactured, is by mere dilution of AVP; which AVP retains its character.

3. The learned Government Advocate, however, submits that the decision is not at all applicable since the Kerala VAT Act, 2003 specifically contained the product ‘AVP’ under the Schedule of ‘industrial inputs’. However, in the present case, the Schedule of ‘industrial inputs’ does not contain AVP. The learned Senior counsel points out the Schedule under the Bihar VAT Act, containing Entry no.114 which is ‘Synthetic organic colouring matter, whether or not chemically defined; preparations based on synthetic organic colouring matter as; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined.’

4. These are questions of fact which are to be dealt with by the Tribunal. We see the Tribunal having not dealt with any of these issues. Though the Tribunal order is of 12 pages, it only records the conflicting submissions of the parties and merely makes a statement that the sale of Ujala by the assessee is not to

be used as an ‘industrial input’ and hence levy of the higher rate of tax at 12.5%, as available under the residuary entry, is justified.

5. In the above circumstances especially since an appeal to the High Court can only be on a question of law, there should be better consideration of the facts by the last fact finding authority, the Tribunal. We remand the matter without any finding on merits, for the Tribunal to consider the issue based on the facts placed before it. The same shall be considered as expeditiously as possible.

6. It is clear that the order deals with not only the rate of tax applicable but also of the penalty levied, which also has been found against the assessee. Both aspects shall be considered in the appeal.

7. The appeal stands disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Bibhash/Saurabh

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