IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17463 of 2021

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1. M/s. RSD Natural Resources Pvt. Ltd. a company incorporated under the Companies Act, 1956, as amended, having their head office at 25, Mullick Street, Kolkata - 700007 and registered office at 403 A, 4th Floor, Kausalya Estate, Duckbunglow Crossing, Patna - 800001.
2. Sri Rahul Jhajharia S/O Sri Director of M/s. RSD Natural Resources Pvt. Ltd., at 25 Mullick Street, P.S.- Bada Bazar, District- Kolkata (West Bengal)- 700007.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Ministry of Finance, Government of Bihar, Patna.
2. Special Commissioner of State Tax, Commercial Tax, Central IB, Ground Floor, Annexy- 3 Old Secretariat, Bihar, Patna.
3. Joint Commissioner of State Tax, Central Investigation Bureau, Central IB, Ground Floor, Annexy- 3 Old Secretariat, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Sinha, Advocate
		Mr. Rajnish Kumar, Advocate
		Ms. Kalawati, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC 11
		Mr. Anshuman Singh, CGC
		Mr. Sanjeet Kumar Singh, AC to AAG 6

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

20 28-08-2024 The petitioners have challenged the order under Section 64 on the ground that no previous permission of the Additional Commissioner or Joint Commissioner has been obtained for the summary assessment as provided under Section 64.

2. The learned counsel for the respondent-State has

filed a counter affidavit wherein page 51 indicates the permission granted.

3. On 3.3.2020 the Additional Commissioner of State Tax-cum-Assessing Authority had submitted a recommendation specifically pointing out that when inspection was conducted in the business premises, the business was not existing. There was an allegation raised that the establishment of the company is only on paper and despite ample opportunities given, the assessee had not replied. The Assessing Officer also pointed out that there is a possibility of the assessee running away, in which circumstances there is a requirement of summary assessment under Section 64 of the BGST Tax, 2017. The data sheet of proceeding taken by the Assessing Officer in which notices were issued and hearing was carried out is also produced in tabular form in paragraph 10 of the counter affidavit filed by the State. On the basis of the submission made by the Assessing Officer the Special Commissioner has ordered that the proceeding of summary assessment is approved.

4. Learned counsel for the petitioners submits that there is no application of mind since it is a one line order and cryptic by its very nature.

5. Section 64 of the BGST Act indicates that the

Proper Officer, on any evidence showing tax liability of a person coming to his notice has to proceed for provisional assessment in the interests of revenue, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interests of revenue: with the previous permission of Additional Commissioner or Joint Commissioner.

6. The satisfaction is of the Assessing Officer and not of the Joint Commissioner. The Assessing Officer has placed before the Additional Commissioner; the approving authority, the facts which includes the necessity for proceeding on summary assessment. There is also no requirement for hearing to be afforded to the petitioners since the approval is only of summary assessment on which the hearing has to be granted by the Assessing Officer. We see that the Assessing Authority after 3.3.2020 and after approval has passed the summary assessment on 23.3.2020. The petitioners were also aware of the summary assessment since demand notices were issued and there was also attendance recorded of the assessee before the Assessing Officer.

7. In the aforesaid circumstances we are of the opinion that the order under Section 64 had to be challenged in appropriate proceeding; with just exception of limitation as

available in the statute.

8. We find absolutely no reason to invoke the jurisdiction under Article 226 of the Constitution. We dismiss the writ petition.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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