IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9573 of 2019

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M/s Anglo French Drugs and Inudstries Limited having its registered office at No. 41, 3rd Floor, 5th Block, Rajaji Nagar, Bengaluru, Karnatka and Local Office- Opp. Eye Hospital, PMCH, Ashok Raj Patna Road, P.S. Pirbahor, District- Patna- 800004 through its authorized Signatory Mr. Rakesh Kumar Verma.

... ... Petitioner

Versus

1. The State of Bihar through Commissioner, Commercial Tax Department, New Secretariat, Patna.
2. Deputy Commissioner of Commercial Taxes, North Circle, Patna.
3. Assistant Commissioner, Commercial Taxes, North Circle, Patna.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate Mr. Abhishek Kumar, Advocate Ms. Prity Kumari, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

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

Date : 22-03-2024

The petitioner is aggrieved with the notice at Annexure-2, issued by the Assessing Officer for the assessment year 2006-07, directing production of books of accounts. The notice itself is dated 28.11.2018 and appearance is directed on 10.12.2018, with the books of accounts.

2. Learned counsel for the petitioner specifically referring to Section 52(3) and Section 33 of the Bihar VAT Act, argued that the dealer is liable to retain his books of accounts only for a period of six years or for a period of two years from

the date on which an assessment or appeal or revision is disposed off. It is also pointed out that as per the Bihar VAT Act, there is a self-assessment made by filing of a return which is final under Section 26 of the Bihar VAT Act, unless re-opened by the Assessing Officer. There are no proceedings taken at any time before Annexure-2, is the specific contention.

3. Learned Government Advocate, however, points out from the counter affidavit that the petitioner was aware of the objection raised by the Comptroller and Auditor General (CAG) and that there was a notice issued in the year 2008, bearing no. 119 dated 14.01.2008. The petitioner did not respond to the same and finally responded to the notice dated 18.11.2018; which probably is the notice at Annexure-2, which is dated 28.11.2018.

4. We see from Section 33 of the Bihar VAT Act that where an objection has been made by the Comptroller and Auditor-General of India in respect of an assessment or re-assessment then the prescribed authority shall proceed to re-assess the dealer with respect to whose assessment or re-assessment or scrutiny, the objection has been made in the manner provided.

5. True there is no limitation provided under Section 33 of the Bihar VAT Act, but as argued by the learned counsel

for the petitioner, it has to be read along with Section 52(3) of the Bihar VAT Act.

6. Section 52(3) of the Bihar VAT Act mandates that every dealer or a person required to keep accounts by sub-section(1) shall preserve all invoices for a period of not less than six years from the end of the year to which they relate, or for a period of two years after the completion of assessment, appeal or revision for the year, whichever is later.

7. In the present case, admittedly, there was no assessment carried out or an appeal or revision filed for the assessment year 2006-07. The Assessing Officer has issued the notice at Annexure-2; only on the basis of an objection raised by the Comptroller and Auditor General. The objection of the Comptroller and Auditor General is produced as Annexure-3, which is said to have been furnished along with the notice at Annexure-2; which is not an authenticated copy nor does it bear a date, which specifically indicates that the annual return was filed on 31.12.2007. The proceedings have been taken after twelve years from the assessment year.

8. Even in the counter affidavit, there is no whisper as to when the objection of the Comptroller and Auditor General was furnished to the Assessing Officer. The only contention taken in the counter affidavit is that there was a notice issued

bearing no. 119 dated 14.01.2008, which was served on the petitioner as far back as in January, 2008. If such a notice was issued and the petitioner failed to respond, as has been claimed in the counter affidavit, necessarily the Assessing Officer could have proceeded with the assessment which obviously was not done. The next statement made in the counter affidavit is that finally the petitioner responded to notice dated 18.11.2018, which indicates that for ten years, the Assessing Authority dragged its feet. There was no assessment or re-assessment carried out during the past twelve years. Hence, the notice at Annexure-2, issued by the respondent no.3, Assistant Commissioner, Commercial Taxes, North Circle, Patna, is set aside and it is directed that there shall be no further proceedings carried out against the assessee for the assessment year 2006-07, on the cause of action of the objection raised by the C&AG.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28-03-2024
Transmission Date	