(2006) 10 PAT CK 0054

In the Patna High Court

Case No : C.W.J.C. No. 6821 of 2006

Bharat Sanchar Nigam Ltd. APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Bihar Finance Act, 1981 — Section 25
Value Added Tax Act, 2005 — Section 39, 41(1)

Citation : (2006) 4 PLJR 470

Hon'ble Judges : S.P. Singh, J;Aftab Alam, J

Bench : Division Bench

Advocate : L.N. Rastogi and Alok Kumar Shahi, for the Appellant; P.K. Shahi, A.G. and Purnendu Singh, J.C. to A.G., for the Respondent

Judgement

1. Heard Mr. L.N. Rastogi, counsel for the petitioner and the Advocate General appearing on behalf of the State.

2. The petitioner M/s. Bharat Sanchar Nigam Limited is aggrieved by and seeks to challenge the order, dated 22.3.2006 by which the Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna, imposed on it the penalty of Rs. 3,50,37,414.82 u/s 25(ka) of the Bihar Finance Act, 1981 and Section 41(1) of the Value Added Tax Act, 2005. He gave a notice to the petitioner to show cause why a penalty under the aforesaid provisions may not be imposed on it for its failure to make deductions of advance tax from the bills of its works-contractors before payment of their bills. A photo stat copy of the notice is at Annexure 5 from which it appears that it was issued by the Assistant Commissioner, Commercial Taxes on 16.3.2006 asking the petitioner to appear before him on 22.3.2006 at 11 in the morning. According to the petitioner, it was received in its office on 20.3.2006 and it came to the concerned department on 21.3.2006 i.e. barely twenty four hours (or even less) before the time fixed for appearance before the authority. A representative of the petitioner appeared before the Assistant Commissioner and also filed a show cause in response to the notice. A

copy of the show cause is annexed to the counter affidavit filed by the respondents. It is a brief show cause only stating that the petitioner had informed its two works-contractors, namely, M/s. Ericsson India Pvt. Ltd. and M/s. Nortel Networks (I) Pvt. Ltd. about its intention to deduct advance tax from their bills if they failed to submit by 22.03.2006 the necessary Sales Tax exemption certificate issued by the concerned authorities. It was further stated in the show cause that in case they failed to submit the tax exemption certificate it would deduct advance tax from their bills and deposit it as directed. By all means it appears to be a perfunctory petition hurriedly prepared without a proper examination of all aspects of the matter.

3. Be that as it may, on 22.3.2006 the Assistant Commissioner, Commercial Taxes considered the show cause that was filed before it and, according to the petitioner proceeded to pass the final order rejecting its prayer for a week''s adjournment. In the impugned order the Assistant Commissioner noted that the petitioner had failed to deduct advance tax from the bills of its works contractors despite repeated reminders in that regard. He calculated that the amount required to be deducted from the bills of which payments were made came to Rs. 1,75,18,707.37 and imposed as penalty an amount twice the amount of deductable taxes.

4. The authority also treated the matter to be one of urgency and making a departure from the normal period that allowed the dealer forty five days time to deposit the amount of penalty, issued a demand notice on the same day (22.3.2006) for realisation of the penalty amount by 29.3.2006. In response to the demand notice the petitioner submitted a very detailed show cause, dated 28.3.2006 (Annexure 4). In this show cause the nature of the transaction between the B.S.N.L. and M/s. Ericsson India Pvt. Ltd. has been described at great length and it is contended, on the basis of a number of judicial pronouncements that the petitioner was not obliged to make any deductions while making payment of the bills of the contractor / supplier. Apparently the show cause, dated 28.3.2006 failed to receive any attention from the Commercial Taxes authorities.

5. The demand notice, dated 22.3.2006 was followed by steps for attachment of the petitioner''s bank account compelling it to deposit the aforesaid penalty amount as desired by the taxing authorities.

6. On hearing Mr. Rastogi and the Advocate General we are left with a distinct impression that the order of penalty was passed against the petitioner in some haste and without giving it due opportunity to place its case before the authority. In the impugned order, at two places, there is reference to the closing of the financial year on 31.3.2006 and the need for the department to get the money before that day, so much so, that even though Section 39 of the Value Added Tax Act gives to the assessee a period of thirty days and Section 25 of the Bihar Finance Act, 1981 (which was in existence on the material date) ordinarily allows a period of not less than forty five days to make payment of the demand, the

Assistant Commissioner, in deviation from the normal, demanded the payment to be made by 29.3.2005. He issued a demand letter on the same day the order of penalty was passed (23.3.2006) asking for payment by 29.3.2006. It was received by the petitioner on 28.3.2006 and, thus, it was left with only one day to meet the demand of over Rs. 3 crores. Justifying the restriction of the period for realisation of the demand, the Assistant Commissioner again referred to the closing of the financial year on 31st March.

7. We are, therefore, of the view that the proceeding was held in an over-wrought manner and the case of the petitioner failed to receive a proper and objective consideration because the authority was unduly anxious about collection of revenue in that financial year.

8. We accordingly set aside the order, dated 22.3.2006 and the consequential demand/order(s) passed on its basis. The matter is remitted to the Assistant Commissioner, Commercial Taxes with a direction to consider the case of the petitioner as contained in their show cause, dated 28.3.2006 (Annexure 5). The Assistant Commissioner will give the petitioner an opportunity of hearing and then pass a fresh order on its liability for deduction of advance tax while making payment of the bills of its suppliers / contractors. In case the liability is established, it will be open to the Assistant Commissioner to reiterate the order of penalty, with or without modification as to the amount of penalty. Otherwise, the petitioner will be entitled to get back the amount realised from them on the basis of the previous order / demand letter either by way of refund or by way of adjustment against its future tax liabilities.

9. The petitioner is directed to appear before the Assistant Commissioner, Commercial Taxes along with a copy of this order within one month from the date of obtaining its certified copy. The Assistant Commissioner shall make endeavour to pass a final order in the matter within three months from the date of its first appearance.

10. This writ petition is disposed of with the aforesaid observations and directions.