(2007) 02 PAT CK 0022

In the Patna High Court

Kisan Agency APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Bihar Finance Act, 1981 — Section 20(1)(b), 33(1)

Citation : (2007) 2 PLJR 188 : (2008) 14 VST 197

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioner is a proprietary firm engaged in the sale of diesel pump sets. It seeks to challenge the order, dated November 18, 2005 passed by the Commercial Taxes Tribunal, Bihar, Patna in Revision Case No. MZ-447/200 by which it rejected the petitioner''s revision and affirmed and orders passed by the appellate and the original authorities levying sales tax, additional sales tax, interest and penalty amounting to Rs. 3,13,024 against the petitioner for the assessment period 1998-99 in a proceeding u/s 20(1)(b) of the Act. The petitioner challenges the imposition of penalty and the orders passed against it on the plea that it was not given a notice containing "precisely and clearly the gist of accusations" as mandatorily required under Rule 19(4) of the Bihar Sales Tax Rules, 1983.

2. The facts of the case are brief and simple. The petitioner-firm was Registered as a dealer on May 29, 1999 with liability to pay tax from October 15, 1998. In its return for the year 1998-99, the petitioner showed the gross turnover of Rs. 36,000. On the other hand, the Revenue Authorities obtained the receipts of sales of pump sets and other materials in that regard from the Land Development Bank, Muzaffarpur from which it appeared that the sales by the petitioner ran into several lakhs of rupees. On the basis of the information received from the bank, the Assistant Commissioner, Commercial Taxes, Muzaffarpur Circle, Muzaffarpur gave a notice to the petitioner (4200/p, dated

November 19, 1999) initiating a proceeding u/s 33(1) of the Act. The notice (annexure 2), loosely translated into English, reads as follows:

You are given notice that for hearing u/s 33(1) of the Bihar Finance Act, 1981 you are required to appear before the undersigned on December 4, 1999 along with the entire books of account.

3. The petitioner appeared on December 4, 1999 and filed a petition for time on which the proceeding was adjourned to December 22, 1999. On that date, the petitioner once again filed a time petition. It was rejected and the case was fixed for ex parte order on December 28, 1999, leaving it open to the petitioner to appear on that date. On December 28, 1999 the petitioner filed Hazri. He also filed a revised return showing a turnover of Rs. 11,10,000. On that date, the Assistant Commissioner, Commercial Taxes passed an order stating that in the return filed by the petitioner, the gross turnover was stated as Rs. 36,000 whereas from the figures obtained from the bank its sales were far more than Rs. 15 lakhs. In the order, it was directed to issue a notice to the petitioner u/s 20(1)(b) of the Act. In pursuance of the order, a notice bearing No. 5944/P was issued. This notice, loosely translated into English, reads as follows:

You are given notice that for hearing u/s 20(1)(b) of the Bihar Finance Act, 1981 before the undersigned on February 8, 2000, you are required to appear with your entire books of account.

4. The service report of notice was received on February 8, 2000. On that date, the proceeding was adjourned, for the last time, to February 18, 2000. On February 18, 2000, once again a time petition was filed on behalf of the petitioner and the proceeding was fixed for February 29, 2000; on that date the final order was passed.

5. From the contents of the notice No. 5944/P, it is evident that it did not contain "clearly and precisely that gist of accusations".

6. It appears that the point was squarely raised before the Tribunal but it rejected the contention on behalf of the petitioner observing as follows:

The objection raised by the petitioner''s counsel that no gist of accusation was given to the petitioner is without substance and merit. It is evident from the lower court records that the petitioner was first noticed u/s 33(1) of the Act but he avoided producing books of account and chose to seek time on one ground or the other. On December 26, 1999, the Hazri was filed and the assessing officer found a big gap between the figures disclosed in original returns and the figures received from Land Development Bank as a result of which the proceeding was converted into one u/s 20(1)(b) of the Act and the notice was issued to the petitioner which was duly receipted by him. The petitioner fully knew what allegations have been levelled against him as u/s 33(1) proceeding the petitioner filed Hazri and he was heard on this point. In this way, the petitioner knew the facts that led to the conversion of proceeding u/s 33(1) into proceeding u/s 20(1)

(b) of the Act.

7. We are unable to accept the reason given by the Tribunal to reject the plea raised on behalf of the petitioner. As seen above, the notice issued u/s 33(1) of the Act was equally cryptic and silent with regard to the materials that had come in the hands of the Revenue. On December 4, 1999 and December 22, 1999, the proceeding was simply adjourned without indicating in the order the accusations against the petitioner or the materials that had come within the knowledge of the Revenue. On December 28, 1999, the order, for the first time, indicated the wide gap between the gross turnover stated in the petitioner''s return and the figure of sales as appearing from the materials received from the bank. But there is nothing to show that the order, dated December 28, 1999 was passed in presence of the petitioner. From the order sheet, it appears that the order dated December 22, 1999 (simple adjournment) was shown to the petitioner. There is nothing to indicate that the order, dated December 28, 1999 too was shown to the petitioner. A copy of the order dated December 28, 1999 was also not sent with the notice issued u/s 20(1)(b) of the Act. It, therefore, cannot be said that apart from the notice the petitioner was aware of the accusations against it and was in a position to effectively defend itself. It is well-settled that failure to comply with the requirement of Rule 19(4) of the rules vitiates the order passed u/s 20(1)(b) of the Act. The order, dated February 29, 2000 passed by the Assistant Commissioner, Commercial Taxes is, therefore, quite unsustainable. Equally unsustainable are the orders passed in appeal and in revision by the Commercial Taxes Tribunal. The impugned orders are accordingly set aside.

8. But the petitioner cannot make a grievance in that regard any longer. The counter-affidavit and the supplementary counter-affidavit filed on behalf of the Revenue give full details of the materials received by the Revenue from the Bank. It contains practically the entire accusations and not merely the gist of accusations against the petitioner. Therefore, the petitioner can no longer contend that it cannot file an effective show cause for want of the gist of accusations against it. The petitioner is accordingly directed to appear before the Assistant Commissioner, Commercial Taxes, Muzaffarpur Circle, Muzaffarpur and to file its show case within one month from today. The Assistant Commissioner, Commercial Taxes will fix a date of hearing and pass a fresh order after giving the petitioner an opportunity to place its case before him. It is expected that a final order will be passed within two months from the date of the petitioner''s first appearance before him.

In the result, this writ petition is allowed subject to the above directions.

Rekha Kumari, J.

9. I agree.

