(2002) 07 PAT CK 0138

In the Patna High Court

Case No : C.W.J.C. No. 7690 of 2002

Monsanto India Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 26-07-2002

Acts Referred:

Citation : (2002) 4 PLJR 118

Hon'ble Judges : R.S. Garg, J;Nagendra Rai, J

Bench : Division Bench

Advocate : L.N. Rastogi and Sandeep Kumar, for the Appellant; R.K. Dutta and Shambhu Kumar for State, for the Respondent

Final Decision : Allowed

Judgement

1. The present application has been filed by the Petitioner for quashing the demand notice dated 16.5.2002 issued by the Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna, asking it to pay tax at the rate of 8% plus 1% additional tax as it is dealing in seeds. The aforesaid order has been passed by the authorities on the basis of a direction received from the Commissioner, Commercial Taxes.

2. It is admitted fact that the Petitioner is an Assessee under the Bihar Finance Act. The dispute is as to the rate of sales tax on the maize seeds. According to the Petitioner, it is liable to pay sales tax at the rate of 4% only and it has been paying the tax at the same rate for the last several years.

3. The stand of the State on the other hand is that the rate of sales tax on the maize seeds is 8% plus 1% additional tax.

4. The learned Counsel appearing for the Petitioner raised two points. Firstly, he submitted that the assessing authority has not applied its mind in passing the order and he has passed the order on the dictate or the direction of the Commissioner of Commercial Taxes-cum-Secretary, Bihar, Patna, and secondly he submitted that the tax on the maize seeds is payable at the rate of 4% only

and not as asserted on behalf of the State.

5. We find force in the first submission raised on behalf of the Petitioner and as such it is not necessary to go into the other question. It appears that the Commissioner, Commercial Taxes, Bihar, Patna, had issued a general direction as contained in letter dated 7.5.2002 (Annexure-2 to the writ application) with regard to several matters including the rate of taxes that is to be levied on certain products.

6. On the last occasion after perusal of the letter of the Commissioner of Commercial Taxes, contained in Annexure-2 to the writ application, we found that they are in the nature of directions to the subordinate authorities to dispose of the matter in terms of the directions. The Counsel for the State took time to seek instruction. Today, the learned Counsel for the State produced a letter dated 25.7.2002 issued by the Commissioner of Commercial Taxes, Bihar, Patna, Respondent No. 2 wherein he has clarified his earlier letter dated 7.5.2002 and has stated that the earlier letter issued by him was not in the nature of the direction to the authorities but it was only a reminder to the authorities to discharge their duties in terms of the Rules and the Act.

7. The Commissioner of Commercial Taxes, Bihar, under the Act and the Rules has no power to issue directions to the subordinate authorities to deal with the matter regarding assessment and other matters mentioned therein in a particular manner. Under the law, the authorities are required to consider the question of assessment independently without being influenced by the directions/ observations of the Superior authority.

8. In view of the fact that Commissioner of Commercial Taxes, Respondent No. 2 by letter dated 25.7.2002 has clarified the matter, the letter dated 7.5.2002 has lost its force and the authorities have to discharge their duties independently on the basis of the materials produced before them. However, we clarify that the assessing authority should ignore the letter dated 7.5.2002 issued by the Commissioner of Commercial Tax, Respondent No. 2, which has been annexed as Annexure-2 to the writ application as stated above and will exercise its mind independently to the proceeding initiated under the Act and Rules.

9. From perusal of the impugned order it is clear that the assessing authority in the impugned order has said that the determination of the sales tax has been made on the basis of the direction contained in the letter dated 7.5.2002 (Annexure-2 to the writ application). He has not applied his mind independently while making the assessment order.

10. Accordingly, impugned demand notice dated 16.5.2002 contained in Annexure-3 to the writ application is set aside and the matter is remitted to the assessing authority to consider the matter afresh in the light of the observations made above.

11. In the result, the writ application is allowed with the above observation.

