

(2016) 03 PAT CK 0135

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4896 of 2016

M/s. Kanhaiya Traders

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Bihar Value Added Tax Act, 2005 — Section 72(2)
Constitution of India, 1950 — Article 226

Citation : (2016) 3 PLJR 205

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ramesh Kumar Datta, JJ.

Bench : Division Bench

Advocate : Mr. Ramesh Kumar Agrawal, Advocate, for the Appellant; Mr. Vikash Kumar, A.C. to A.A.G, for the Respondent

Final Decision : Allowed

Judgement

Mr. Hemant Gupta, J. (Oral) - The challenge in the present writ application is to an order, Annexure-7, dated 15.10.2015 whereby an appeal filed by the petitioner was rejected on the ground that the petitioner has not deposited 20% of the assessed amount of tax as required under section 72(2) of the Bihar Valued Added Tax Act, 2005 (for short the Act).

2. An order of assessment was passed by the Assistant Commissioner, Commercial Taxes, Khagaria on 08.05.2015. In terms of the assessment order, demand notice dated 19.05.2015 was issued to the petitioner demanding a sum of Rs. 38,57,325/- as amount of tax and the interest of Rs. 6987/-. The petitioner filed an appeal. The appeal was admitted but subsequently a show cause notice was issued on 24.07.2015 as to why an order admitting the appeal be not recalled. The petitioner filed a reply dated 09.10.2015 stating that he has deposited a sum of Rs. 14,89,021.55 as output tax at source and, therefore, the same is deductible as Input Tax Credit. It was stated that the said amount is more than 20% of the demand raised, therefore, the petitioner satisfies the requirement of subsection (2) of Section 72 of the Act.

3. Such assertion of the petitioner was rejected by the Joint Commissioner, Commercial Taxes (Appeal) on the ground that the petitioner has not produced the proof of payment of tax and that explanation given by it is vague. Therefore, the appeal is not liable to be admitted as there is non-compliance of the provisions of Section 72(2) of the Act.

4. Learned counsel for the petitioner has referred to acknowledgement/receipt for payment of Value Added Tax as Annexure-2 whereby on 22.12.2014 as against total output tax of Rs.14,97,349.13 the total input tax is said to be Rs.14,96,170.77. The said amount is more than 20% of the demand raised, thus, it would comply with the statutory requirement under sub-section (2) of Section 72 of the Act.

5. We have heard learned counsel for the parties. There is no counter to say that Annexure-2 is not correct. The argument of learned counsel for the State that there is no proof of payment of tax is not tenable. It is a copy of e-Return filed by the petitioner in respect of output tax and input tax deposited by the petitioner. There is no denial of the payment of input tax, as alleged by the Petitioner vide Annexure-2. Thus the petitioner has proved documents to show that 20% of the tax assessed already stands paid. Thus we find that the order rejecting the admission of appeal of petitioner suffers from illegality and irregularity. Therefore, the impugned order is set aside. The Joint Commissioner (Appeals), Purnea is directed to decide the appeal on merits.

6. The writ application thus stands allowed.