
(2007) 12 PAT CK 0006
In the Patna High Court
Case No : CWJC No. 4608 of 2007

M/s Pro Agro Seeds Co. (P) Ltd.	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 13-12-2007

Acts Referred:

Bihar Finance Act, 1981 — Section 19, 19(1)

Citation : (2009) 1 PLJR 642

Hon'ble Judges : Narayan Roy, Acting C.J.;Mihir Kr. Jha, J

Bench : Division Bench

Advocate : L.N. Rastogi and Udayan Chaudhary, for the Appellant; Lalit Kishore and S. Bharti, for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kr. Jha, J.—In this writ application, the petitioner-company has assailed the validity of notices, dated 5.9.2006, the assessment order, dated 20.11.2006 and the consequential demand notices also dated 20.11.2006 for the years 1997-98, 1998-99, 1999-2000, 2000-01 and 2001-02 under Bihar Finance Act, 1981 (hereinafter referred to as "the Act"). The case of the petitioner as set out in the writ application is that it is a wholeseller carrying business of hybrid maize seeds and other items. It has been stated that the petitioner-company had been assessed to sales tax @ 4 per cent on the sale of maize seeds for the period 1997-98 to 2001-02. The further case of the petitioner is that a proceeding u/s 19 of the Act was initiated against it on the basis of a judgment of the Patna High Court in the case of M/s SPIC PHI Seeds Ltd. Vs. The State of Bihar and Others, wherein it had been held that the sales tax on maize seeds was to be paid @ 8 per cent and not @ 4 per cent. In this regard, the grievance of the petitioner is that the judgment of the Patna High Court in the case of M/s Spic Phi Seeds Ltd. has not attained finality and the issue is still subjudice before the Apex Court for an authoritative and final pronouncement as to whether the maize seeds are taxable @ 8 per cent or @ 4 per cent.

2. In the writ application, the initiation of the proceeding u/s 19 of the Act by way of notice, dated 5.9.2006. Annexure-1 series has however been assailed on the ground that such notice is not in conformity with the mandatory conditions laid down under Rule 20 of the Bihar Sales Tax Rules, 1983. In this context, the case of the petitioner is that Rule 20 of the Bihar Sales Tax Rules prescribes issuance of notice in "a prescribed Form No. XIV and since no notice in Form-XIV was, served on the petitioner, the entire proceeding u/s 19(1) of the Act stood vitiated and was fit to be quashed. It has been further stated in the writ application and the supplementary affidavit that once the notice for initiating the proceeding u/s 19 of the Act was vitiated, it must be held that the consequential assessment order, dated 20.11.2006 and the resultant demand notices, dated 20.11.2006 are also bad and hence, fit to be quashed.

3. A counter affidavit has also been filed on behalf of respondents 2 to 4 wherein it has been stated that the notices were issued to the petitioner only when the prescribed conditions and requirements u/s 19 of the Act were fulfilled against the petitioner. In this context, it has been explained that the commodity hybrid maize seeds is an unspecified commodity and its rate of tax was 8 per cent which was to be imposed under the provisions of the Act against the petitioner, the registered dealer. The Assessing Authority in fact after acquiring knowledge from records that the petitioner had paid tax at a lower rate i.e. 4 per cent in place of 8 per cent and was thus under-assessed, had initiated a proceeding u/s 19 of the Act by way of a notice, dated 5.9.2006.

4. It has been also explained in the counter affidavit that the commodity hybrid maize seeds were under-assessed at the lower rate of tax in the original assessment proceeding initiated against the petitioner and, therefore, on acquiring knowledge and being satisfied that the petitioner had been under-assessed at the lower rate of tax, a notice as required u/s 19(1) of the Act was given. In this context, the respondents have specifically denied the fact that the proceeding in question had been initiated on the basis of the judgment rendered in the case of M/s Spic Phi Seeds Ltd. (supra) and on the contrary, it has been submitted that such a view on the issue of maize seeds being not chargeable @ 4 per cent but at @ 8 per cent had in fact been already taken by the Authority much before the judgment of this Court in the case of M/s Spic Phi Seeds Ltd. and in fact the correctness of the said decision on being assailed by the petitioner in a writ application was upheld by this Court in the decision reported in M/s SPIC PHI Seeds Ltd. Vs. The State of Bihar and Others, .

5. The respondents in fact have also explained in their counter affidavit that the plea of notice being not in a prescribed proforma is also untenable and for this purpose the respondents have not only relied on the content of notice Annexure-1 series but also on the averment made in reply enclosed the reply submitted by the petitioner to the notice and on that basis it has been sought to be conveyed that the petitioner had not at all been prejudiced in the proceeding u/s 19 of the Act. By referring to the explanation furnished by the petitioner in its

exhaustive reply running into 12 paragraphs, it has been further explained by the respondents that it cannot be said that the petitioner had failed to understand the purport and/or the purpose of the notice. In the counter affidavit, it has thus been stated that the petitioner was not only given a proper notice u/s 19 of the Act, but also an adequate opportunity of placing its case in course of hearing before the Assessing Officer who upon perusal of the records including the show cause reply filed by the petitioner had passed a detailed order of assessment, dated 20.11.2006.

6. The petitioner has also filed a rejoinder to the said counter affidavit where it has merely reiterated its own case without specifically dealing with much less controverting the averments made in different paragraphs of the counter affidavit, specially on the point of prejudice to the petitioner on account of the notice being not issued and served on it in the prescribed Form-XIV.

7. Mr. L.N. Rastogi, Senior Counsel appearing on behalf of the petitioner in fact was quite emphatic in his submissions that the writ application must succeed only on the ground that the notice which was issued to the petitioner on 5.9.2006 was not in prescribed Form No. XIV and accordingly such notice must be held to be bad in law and in process had vitiated the entire proceeding including the order of assessment dated, 20.11.2006 and/or the resultant demand notice, dated 20.11.2006. In this regard, he had placed his strong reliance on a Division Bench judgment of this Court in the case of Usha Safes (Pvt.) Limited vs. The State of Bihar, reported in [1985]58 STC 217 wherein according to him, it has been held that the notice prescribed u/s 18(1) of the Bihar Sales Tax Act, 1959 for the purposes of initiating reassessment proceeding being not a mere procedural requirement has to be complied strictly in letter and spirit.

8. He has also expanded his submission that issuance of no notice and issuance of an invalid notice stand on the same footing and, therefore, the entire proceeding u/s 19(1) of the Bihar Sales Tax Act would be equally vitiated if the authorities did not choose to issue notice or where notice issued was invalid. Thus, according to Mr. Rastogi, learned Senior Counsel, a proceeding of reassessment initiated and concluded without notice stood on the same footing as that of a proceeding initiated and concluded on an invalid notice.

9. Learned Senior Counsel had also questioned the basis or the source of information for launching of the reassessment proceeding as according to him, a judgment, of this Court with regard to the rate of tax on maize seeds could not have led to the launching of reassessment proceeding. In this context, he had placed reliance on the judgment of the Full Bench of this Court in the case of Bhimraj Madanlal vs. State of Bihar and Another, reported in [1984]56 STC 273 wherein it has been held that the information envisaged u/s 18(1) of the Bihar Sales Tax Act, 1959 for purposes of reassessment can not be based on a second thought or a mere change of opinion of the prescribed authority on the same set of facts and materials.

10. Mr. Lalit Kishore, learned Additional Advocate General No. -III appearing on behalf of the respondents, on the other hand, had submitted that there was no infirmity in the re-assessment proceeding. In this regard, he had explained that the content of the impugned notice was not defective or lacking in any manner. He had further taken a stand that a proceeding u/s 19 of the Act would not stand vitiated ipso facto in absence of a notice of reassessment in Form-XIV.

11. Learned Additional Advocate General No. -III in this regard had invited attention of this Court to the contents of the impugned notice which in his view clearly went on to show that the prescribed authority had formed his satisfaction on the basis of the information derived from the records of the proceeding that the petitioner had been assessed sales tax at a rate lower than one which was correctly applicable in its case for the commodity hybrid maize seeds and that whereas it was required to pay sales tax @ 8 per cent, it had paid only @ 4 per cent. Learned Counsel, therefore, was equally emphatic in his submission that the notice, dated 5.9.2006 served on the petitioner was in conformity with the requirement laid down u/s 19 of the Act.

12. In the last limb of submission, Mr. Lalit Kishore, learned Additional Advocate General No. -III had taken a serious objection to the plea of invalid notice raised by the petitioner and he had submitted that once the impugned notice was served and was also answered by the petitioner, leading to passing of the impugned final order of assessment after considering books and accounts, placed by it in course of hearing, its objection with regard to non-issuance of notice in the prescribed proforma. Form-XIV must be held to have been waived by the petitioner. In this context had further relied on two decisions of the Apex Court being, (i) M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another, , and (ii) Commissioner of Customs, Bombay Vs. Virgo Steels, Bombay and Another, .

13. Before I record my views on the aforementioned submission made on behalf of the parties, I must mention here that this very matter at the instance of this very petitioner as with regard to the applicability of rate of sales tax, whether 4 per cent or 8 per cent on maize seeds has already been decided in two earlier cases filed by the petitioner itself. In fact, the petitioner initially moved this Court in CWJC No. 9901 of 2002 assailing the notice dated 21.2.2002 directing the petitioner to pay sales tax @ 9 per cent on the maize seeds. It was then contended by the petitioner that the said notice was bad because that was based on a letter of the Commissioner of Commercial Taxes being Instruction No. 198 dated 7.5.2002. It was further contended that the said instruction of the Commissioner of Commercial Taxes, dated 7.5.2002 was contrary to the earlier notification, dated 26.12.1977 according to which the rate of sales tax payable on maize in all its forms and thus also on maize seeds, was 4 per cent only. This Court in the judgment dated 18.9.2002, since reported in Pro Agro Seeds Co. Ltd. Vs. State of Bihar and Others had quashed the impugned notices only on the ground that such notice was issued only on a material in form of a direction of

the Commissioner of Commercial Taxes contained in his letter dated 7.5.2002. In that context, it was held in paragraph No. 11 as follows:-

11. ...Under the Act and the Rules, the Commissioner is not empowered to issue a direction to the authority exercising quasi-judicial function. In that view of the matter, the aforesaid direction issued by the Commissioner cannot be a ground to issue a notice demanding sales tax @ 9% without assessment as provided under the provisions of the Act. The assessing authority, in our view, has exceeded its jurisdiction in making a demand, vide Annexures-1 series, regarding amount of tax without making an assessment under the provisions of the Act. It is not a case that the aforesaid amount is due according to the information furnished in the return. It is also not the case that return has not been approved and action has been initiated u/s 20 of the Act after giving opportunity of hearing to the petitioner. Thus, the impugned notices, as contained in Annexures-1 series, are quashed. It is made clear that this Court is not expressing any opinion as to the rate of tax, which is to be paid by the petitioner. It is for the assessing authority to consider the matter in terms of the provisions of the Act and determine the rate of tax in terms of the statutory provisions/instructions by taking independent decision without being influenced by the direction issued by the Commissioner, who, as we have held, has no authority in law to issue the said direction. It is also made clear that in case the assessing authority on final assessment finds that the informations furnished in the returns were incorrect then the authority may take actions as provided under the Act. (emphasis added)

14. Subsequently, the petitioner was assessed alongwith other similar registered dealers dealing in maize seeds @ 8 per cent. Such assessment order was assailed on different grounds including that earlier they were charged @ 4 per cent by treating maize seeds as cereals, but the assessment order passed for the year 2002-03 they had been charged @ 8 per cent. This Court thus went into the entire gamut of the applicability of rate of sales tax on maize seeds by taking into account the previous notifications as also the stand of the registered dealers dealing in maize seeds including the petitioner of the present case. It would be useful to quote paragraph Nos. 23, 24 and 28 of the said judgment rendered in CWJC No. 16438 of 2004 filed by the petitioner, which was heard alongwith four other similar writ petitions and was disposed of by a common judgment, dated 29.4.2005 since reported in M/s SPIC PHI Seeds Ltd. Vs. The State of Bihar and Others, .

23. Thus, after going through the judgments cited by the learned counsel for the parties and taking into consideration the settled law as indicated above the botanical and technical meaning with regard to which the reference was made by some of the learned counsel for the petitioners cannot be of any assistance to determine the controversy. The word used in the entry is to be understood as understood by the persons dealing with it. No doubt the maize seed is also maize but in common parlance people dealing with it treat it in a different manner. The maize can only be treated as cereals when they are fit for human consumption

and the livestock. But as the maize in question are asked with chemical and poisonous substance, they can be used only for growing crops/cereals and not for consumption.

24. Thus, we held that the maize seeds are not covered by Entry No. 12 of Annexure-III and the assessing authorities are right in coming to the conclusion that the rate of tax is 8% and not 4%.

28. Thus, the assessing authorities were right in charging the rate of tax @ 8% with regard to the maize seeds and the maize seed is not included within the definition of the cereals under Entry No. 12 of Annexure-3 even a liberal meaning is given to the word cereals.

15. From the aforementioned two decisions of this Court on the same issue as raised in the present writ application filed by the petitioner itself, this much is clear that there is an inter-party judgment that the rate of sales tax on maize seeds is 8 per cent and not 4 per cent and admittedly the petitioner from the year 2002-03 is paying such sales tax @ 8 per cent.

16. It, however, appears that after the said judgment was delivered on 29.4.2005, the authorities including the Assessing Officer had also looked into the assessment record of the years 1997-98 to 2001-02 and having found that the petitioner had escaped assessment @ 8 per cent and in fact it paid sales tax only @ 4 per cent, a proceeding was initiated for five years by issuing the impugned notice, dated 5.9.2006 in purported exercise of Section 19 of the Act. The submission of the petitioner, therefore, that the notice in terms of Section 19 read with Form XIV having been not issued would vitiate the entire proceedings of reassessment has to necessarily depend on the scope and purport of Section 19 of the Act. Section 19 of the Act reads as follows:-

19. Turnover of registered dealer escaping assessment.-(1) If upon information which has come into his possession, the prescribed authority is satisfied that reasonable grounds exist to believe that any turnover of a registered dealer or a dealer to whom grant of registration certificate has been refused under the third proviso to subsection (2) of Section 14, in respect of any period has, for any reason, escaped assessment or any turnover of any such dealer or a dealer assessed under sub-section (5) of Section 17 has been under assessed or assessed at a rate lower than that which was correctly applicable or any deductions therefrom has been wrongly made, the prescribed authority may, subject to such rules as may be made by the State Government under this part, and-

(a) within eight years from the date of the order of the assessment or reassessment where the said authority has reasons to believe that the dealer has concealed, omitted or failed to disclose willfully the particulars of such turnover or has furnished incorrect particulars of such turnover and thereby returned figures below the real amount,

(b) within eight years" from the date of the order of the assessment or reassessment in any other case,

Serve on the dealer a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 17 and proceed to assess or reassess the amount of tax due from the dealer in respect of such turnover, and the provisions of this part shall, so far as may be, apply accordingly as if the notice under this sub-section was a notice under sub-section (2) of Section 17:

Provided that the amount of tax shall be assessed or reassessed after allowing such deductions as were permissible during the said period and at rates at which it would have been assessed had the turnover not escaped assessment or full assessment, as the case may be.

Explanation.- xx xx xx

(2)(a) The prescribed authority shall, in a case failing under clause (a) of sub-section (1), direct that the dealer shall pay by way of penalty a sum not exceeding three times but not less than an amount equivalent to the amount of tax which is or may be assessed on the escaped turnover.

(b) The penalty imposed under clause (a) shall be in addition to the amount of tax, which is or may be assessed on the escaped turnover, and the order imposing penalty may precede the assessment of escaped turnover.

(c) For determining the amount of penalty under clause (a), where the penalty precedes assessment under clause (b) the prescribed authority shall quantify the amount of suppression and tax thereon provisionally in the prescribed manner.

(d) No order shall be passed under this sub-section without giving the dealer an opportunity of being heard in the prescribed manner.

(3) Any assessment or reassessment made and any penalty imposed under this section shall be without prejudice to any action, which is or may be taken u/s 49.

17. Thus, from a bare perusal of Section 19 of the Act, it becomes crystal clear that such power of reassessment can be exercised upon a valid satisfaction recorded by the prescribed authority that reasonable ground(s) exist and that such satisfaction was based upon information that the turnover of a registered dealer had escaped assessment or the turnover had been under-assessed or the turnover had been assessed at a rate lower than which was correctly applicable or that the turnover had been subjected to wrong deductions. These requirements in the case of the petitioner was found to have been totally fulfilled by the prescribed authority who had made a clear recital in the impugned notice that upon looking into the records of earlier assessment, he had been satisfied that the petitioner had been under assessed i.e. had been assessed at a rate lower than which was correctly applicable in its case. In such view of the matter, it can be definitely held that the notice given by the authorities u/s 19 of the Act had all the ingredients and it did not suffer from any material irregularities only

because it was not issued in the alleged prescribed Form-XIV.

18. As a matter of fact, if in this background, one looks at the requirement and the contents of a notice as prescribed in Form-XIV, it becomes clear that the present proceeding of reassessment has not been vitiated on account of the notice having been issued in the prescribed Form-XIV. The scheme of the Act and the Rules demonstrate that Form-XIV is a part of requirement of Rule 20 of the Bihar Sales Tax Rules, 1983, Rule 20 of the Rules reads as follows:-

20. Notice of hearing.-The notice of hearing for the purposes of clause (ii) of sub-section (5) of Section 15, Section 17, sub-section (1) of Section 19, sub-section (3) of Section 25, shall be in Form-XIV. The authority prescribed in Rule 18 shall fix a date ordinarily not less than one calendar month from the date, of issue of the notice for producing such accounts and other evidence, as it may require and for considering any objection which the dealer or the person concerned may prefer.

19. The reading of Rule 20 of the Rules, therefore, makes it clear that a notice of hearing for the purposes of exercise of power u/s 14(5), Section 17, Section 19(1) and Section 25(3) of the Rules is to be given in Form-XIV. The purpose of such notice thus in view of the wording of Rule 20 of the Rules is very limited as against the requirement of notice that has to be given in terms of Section 19(1) of the Act and accordingly it must be held that merely because a notice in prescribed Form-XIV while initiating a proceeding had not been issued will not vitiate the initiation of proceeding or the final order passed in course of reassessment of a registered dealer escaping assessment in its total turnover. As a matter of fact, the notice in Form-XIV is a compact one and has seven parts in which part (a) deals with the notice of Section 14(5), part (b) deals with Section 17(2), part (c) deals with Section 17(4), part (d) deals with Section 17(5), part (e) deals with Section 18, part (f) deals with Section 19(1) and part (g) deals with Section 25 of the Act. It is only part (f) of the Form-XIV which for the purposes of this case pertaining to a notice u/s 19(1) of the Act is relevant and is quoted hereinbelow:-

"(f) WHEREAS upon information which has come into my possession I am satisfied that reasonable grounds exist to believe that your turnover for the period mentioned below has escaped assessment/has been under assessed/has been assessed at a rate lower than that which was correctly applicable/has been subjected to wrong deduction."

20. If the aforementioned requirement of part (f) of Form-XIV is examined with the contents of the notice, dated 5.9.2006, it can be safely found that there is a clear recital with regard to availability of an information with the prescribed authority gathered from the records of the earlier assessment proceedings which satisfied him that the petitioner in those years of assessment had been under assessed at a lower rate and thus required reassessment in terms of Section 19(1)(g) of the Act. There was also no vagueness in the notice inasmuch as it

was also clearly stated that the rate of sales tax on hybrid maize seeds applicable and payable was 8 per cent whereas the petitioner was charged at a lower rate of @ 4 per cent. The petitioner was accordingly directed to appear for hearing in the proceeding u/s 19(1) of the Act with all the detailed information disclosed in the notice, dated 5.9.2006 and thus in my considered opinion, the requirement of the notice even as per Form-XIV and its paragraph (f) was fully complied with both in form and substance of the impugned notice, dated 5.9.2006. Merely because the said notice, dated 5.9.2006 was not issued in prescribed proforma under Form-XIV in the present case it would not vitiate the entire proceedings u/s 19 of the Act because even otherwise each and every requirement of the notice in terms of Section 19 of the Act read with Rule 20 of the Rules were fulfilled in the impugned notice dated 5.9.2006.

21. The petitioner in fact in my opinion was also not handicapped or prejudiced in any manner in submitting its show cause reply to the impugned notice dated 5.9.2006 as is apparent from its detailed show cause reply, Annexure-A series to the counter affidavit. A perusal of the aforesaid show cause reply filed by the petitioner itself goes to show that neither any objection with regard to non-issuance of notice in Form-XIV was raised in the reply filed by the petitioner before the prescribed authority nor the petitioner was in any way-handicapped in filing of a reply to the notice, dated 5.9.2006 due to lack of information/detail. As a matter of fact, the exhaustive show cause reply filed by the petitioner, was also in the background of its two earlier round of litigation on the same issue before this Court in the two reported judgment i.e. Pro Agro Seeds Co. Ltd. Vs. State of Bihar and Others and M/s SPIC PHI Seeds Ltd. Vs. The State of Bihar and Others, each and every plea on merit were explained at length. One may not loose sight of the fact that the plea on merit of the petitioner with regard to rate of tax had already been decided by this Court while dismissing the writ petition of the petitioner on 29.4.2005 in C.W.J.C. No. 16438 of 2004. Under such circumstances, it is difficult for me to accept the submission on behalf of the petitioner that non-issuance of notice in the prescribed proforma, Form-XIV would vitiate the entire proceedings. In coming to this conclusion. I find also support from the ratio of Savitha Chemicals (supra) wherein the Apex Court had upheld the validity of a proceeding under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Union Practices Act, 1971 by repelling a similar contention as with regard to the effect of not serving the notice as prescribed under the Rules. The Apex Court in fact went to hold that if all the requirement of a notice as prescribed in the Rules is fulfilled in a notice, not issued in the prescribed format, the same would not invalidate the entire proceeding and the final order if the purpose and context of the notice had afforded a reasonable opportunity, in the present case also the content of the notice dated 5.9.2006 (Annexure-1 series) discloses all the material particulars as prescribed u/s 19(1) of the Act and when it has been clearly stated that the Assessing Officer was satisfied that the petitioner had been assessed at a lower rate of sales tax on the hybrid seeds i.e. @ 4 per cent in place of 8 per cent as

prescribed, and as such it had to appear for hearing u/s 19(1) of the Act, it cannot be even remotely suggested that any portion of the prescribed format of the notice under Form-XIV in terms of Rule 20 was violated.

22. In this context the reliance placed by the learned Senior Counsel for the petitioner on the decision of this Court in *Usha Sales* (supra) is wholly misplaced because what was decided therein was that a proceeding of reassessment u/s 18 of the Bihar Sales Tax Act would stand vitiated if the conditions i.e. prerequisites for issuance of notice u/s 18 were completely lacking. The said decision is not an authority that if a notice has not been issued in the prescribed proforma that by itself would vitiate the entire proceeding. Moreover it is not the case of the petitioner that the prerequisite condition of Section 19 of the Act for reassessment was not fulfilled in its case because it is admitted, by the petitioner that it had paid sales tax @ 4 per cent by treating the maize seeds as cereals whereas the prescribed rate of sales tax on maize seeds was 8 per cent and that its effort to justify its stand that maize seeds was also a cereal and could have been subjected to sales tax only @ 4 per cent and not @ 8 per cent had already been negated by this Court in the earlier writ application filed by the petitioner and other similarly situated dealers in C.W.J.C. No. 16438 of 2004 disposed of on 29.4.2005 and the appeal at the instance of the petitioner against the said judgment was/is still pending before the Apex Court without any stay of the impugned judgment in such a situation if the Assessing Officer by examining the records of assessment of earlier years and even by relying on the aforementioned inter-party judgment dated 29.4.2005 of this Court had arrived at a prima facie conclusion that the petitioner had been under assessed at a rate lower than that which was correctly applicable, it cannot be said that the conditions and the prerequisite of Section 19 as with regard to reassessment of a registered dealer escaping assessment was not fulfilled.

23. As a matter of fact this Court in the *Usha Sales* case in the concurring judgment of Justice S.K. Jha (as his Lordship then was) has himself made a clear distinction in the cases where there is a complete lack of jurisdiction and the cases in which the defect is confined to procedural technicalities. His Lordships had held as follows:-

"So far as the procedural technicalities are concerned I shall be first person to throw them into the legal dustbin, and in such matters the principle of waiver and estoppel can be invoked....".

In absence of any challenge on behalf of the petitioner either to the applicability of Section 19 of the Act to its case or non-fulfilment of the requirement to the proceedings u/s 19 of the Act, the plea on behalf of the petitioner as with regard to the defect in the notice of not being in the prescribed proforma, one relating to defect in procedural technicalities is fit to be rejected specially when in its show cause reply (Annexure-A), no such plea at all as with regard to the content and/or the prejudice on account of the notice being not in the prescribed FormXIV has been even raised. Thus the said plea of the petitioner is clearly hit

by the principle of waiver and acquiescence as held in a similar case by the Apex Court i.e. Commissioner of Customs, Bombay Vs. Virgo Steels, Bombay and Another, wherein after discussing the effect of the content of the notice and the show cause reply in paragraph No. 6 to 16, in a proceeding u/s 28 of the Custom Act, 1962 it was held by the Apex Court that an assessee could waive its right as against a notice and once it had waived such a right, it could not be permitted to turn around and contend that the proceeding initiated against it are void for want of notice so as to frustrate the statutory duty of the revenue to demand and collect duty which the assessee intentionally evaded.

24. The reliance placed by Mr. Rastogi on a Full Bench decision of this Court in the case of Bhim Raj Madan Lai vs. State of Bihar and Another, (1984)56 STC 273 [:1984 PLJR 584] that sales tax law is a technical law and that the information as contemplated u/s 19 of the Act for the purposes of reassessment cannot be based on second thought or a mere change of opinion by the prescribed authority on the same set of facts and materials will not be applicable in this case inasmuch as from the records of the earlier assessment it was clear that the petitioner had made payment of sales tax @ 4 per cent by treating the maize seeds as cereals even though it was registered under the Sales Tax for dealing in seeds and other ancillary items and that the subsequent judgment of this Court rejecting the said stand of the petitioner of the maize seeds being cereal had definitely constituted sufficient ground by way of information for purposes of reassessment as was held by the Full Bench of this Court in the Bhim Raj Madan Lal case (supra) that information as envisaged u/s 18(1) of the 1959 Act [now after amendment Section 19(1) of the Act] for the purposes of reassessment need not necessarily spring from a source external or extraneous to the original record and may well stem from the original assessment records itself.

25. Thus, having given anxious consideration to the issues raised by the petitioner as against the entire reassessment proceedings including the impugned notice, assessment order and consequential demand notices, I find there is no infirmity in the same. Consequently the writ application is devoid of any merit and is fit to be dismissed. In the result this writ application is dismissed but there would be no order as to costs.

Narayan Roy, A.C.J.

26. I agree.