(1988) 07 PAT CK 0007

In the Patna High Court

Case No : C.W.J.C. No. 3475 of 1982

Shree Bihariji Mills Ltd. and Another APPELLANT

Vs

The State of Bihar and Another RESPONDENT

Date of Decision : 28-07-1988

Acts Referred:
Bihar Sales Tax Act, 1959 — Section 18, 18(1)

Citation : (1988) 71 STC 293

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : G.C. Bharuka, Navniti Prasad Singh and S.D. Sanjay, for the Appellant; D.N. Singh and Nirmal Kumar, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, J.—By this writ application the petitioners have challenged the validity of the order contained in annexure-2 whereby reassessment proceeding has been initiated against the petitioner by the respondent No. 2 u/s 18(1) of the Bihar Sales Tax Act, 1959. This relates to the period 1977-78.

2. The first petitioner is a company and it owns and runs a modern wheat roller flour mills and it manufactures wheat products like atta, sujji and maida. It is a registered dealer within the meaning of the Act and the second petitioner is one of the directors of the said company.

3. During the period 1977-78 this company had sold wheat products worth Rs. 13 lacs and all outside the State of Bihar through its arhatias. It claimed deduction and exemption in respect of such sales under the Act. The assessing officer, after examining each and every matter on record and after proper verification of the books of accounts, allowed the deduction claimed by the petitioner. The assessment order is dated 11th April, 1979 marked annexure-1.

4. In the year 1982, the Deputy Commissioner initiated a proceeding of reassessment and the petitioner-company was directed to produce the books of

accounts by 7th July, 1982. The petitioner then filed an application for grant of time in order to enable itself to know the basis on which the reassessment proceeding was initiated. Having learnt that the reassessment proceeding was initiated on the basis of audit objection, it applied for the certified copy thereof, but it was refused.

5. By his order dated 9th July, 1982 the assessing officer summarised the audit objection according to which the claim of deduction had been granted with respect to the sales of wheat products outside the State of Bihar to commission agents and held that the same should not have been granted, since it has been manufactured out of the stocks of wheat purchased on furnishing declaration in form IX. The next date for appearance was fixed on 3rd August, 1982. The said impugned order has been marked annexure-2.

6. The learned Counsel appearing for the petitioner has challenged the said order and contended that respondent No. 2 desired to make reassessment on the basis of the same materials which were already on the record and formed part of the assessment order. Such reassessment will amount to the change of opinion of the other assessing officer which the respondents were not entitled to do in law.

7. From the bare perusal of the impugned order of reassessment contained in annexure-2, it appears that proposed reassessment was sought to be made after a long lapse of time and admittedly on the same materials which were present before the assessing authority who had already assessed the petitioner in the year 1979 and had allowed the deduction claimed by him.

8. The true scope and ambit of Section 18 of the Act came up for consideration before a Full Bench of this Court in the case of Bhimraj Madanlal Vs. State of Bihar and Another, wherein it was held :

The ''information'' envisaged by Section 18(1) of the Act for purposes of reassessment need not necessarily spring from a source external or extraneous to the original record and that having second thoughts or a mere change of opinion by the prescribed authority on the same set of facts and materials on the record would not constitute ''information'' u/s 18(1) of the Act for the purposes of reassessment.

9. Since the contention raised by the petitioner''s counsel is fully covered by the said Full Bench decision of this Court and on facts of the present case the admitted position is that the reassessment was sought to be made on the basis of the same materials which were already on record, the petitioner''s contention is upheld and the application is allowed. The order contained in annexure-2 is quashed, but in the circumstances of the case there will be no order as to costs.