

(2016) 10 PAT CK 0058

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12158 of 2016

Ujjain Engicon India Pvt. Ltd.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Bihar Value Added Tax Act, 2005 — Rule 22, Section 26
General Clauses Act, 1897 — Section 27

Citation : (2017) 1 PLJR 419

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. D.V. Pathy, Advocate, for the Petitioners; Mr. Vikash Kumar, S.C. 11, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Hemant Gupta, J.(C.A.V.) - The challenge in the present petition is to an order passed by the Assistant Commissioner of Commercial Taxes, Bagaha Circle, Bagaha, on 20th June, 2013 under Section 26 of the Bihar Value Added Tax Act, 2005 (for short, "the Act") pertaining to assessment year 2007-08.

2. At the outset, learned counsel for the petitioner states that the said order was passed without any notice to the petitioner and the factum of such order came to the notice when the notice of demand dated 20th June, 2013 was served on 18th May, 2016. In view of the said fact, we find that the present petition may not be liable for dismissal on the ground of delay and laches, but the question is whether such order of assessment can be challenged by the petitioner in a writ application without availing the statutory remedy.

3. The impugned order of assessment is challenged on the grounds (1) that no notice was served upon the petitioner; and (2) that the same is beyond the period prescribed for completing the assessment.

4. In respect of the first argument, in the counter affidavit, it is pointed out that

the notice under the Registered Post was sent to the petitioner, which was not received back. Since the registered notice was sent to the address of the petitioner, therefore, it is deemed to be served.

5. A perusal of the proceedings (Annexure-2) produced by the petitioner shows that the registered letter was sent on 3rd of June, 2013 as a follow up action of the interim order recorded on 1st of June, 2013. Therefore, we do not find any merit in the argument that the order of assessment was passed without notice to the petitioner.

6. In respect of the second argument, the assessment has been framed consequent to audit report under Section 26 of the Act read with Rule 22 of Bihar Value Added Tax Rules, 2005. The proceedings were taken up for assessment on 1st of June, 2013 and as mentioned above, notice was issued.

7. To appreciate the argument whether such proceedings are beyond the period of limitation or not, some of the relevant provisions of the Act and the Rules read as under :

24. Returns, Payment of Tax, Interest and Penalty.-(1) Every person, being a dealer, who is not registered under this Act, by a notice served in the manner prescribed by the prescribed authority, shall furnish a true and complete return to the prescribed authority in such form and manner and by such time as may be prescribed.

(1A) Every person, being a registered dealer (other than a dealer permitted to pay tax under sub-section (1) or subsection (1A) or sub-section (4) of Section 15 or Section 15A) shall furnish, to the prescribed authority, a true and complete return, in the form and manner prescribed, in respect of all his transactions relating to sales, purchases, receipts and dispatches of goods and any other transactions prescribed specifically for each quarter, on or before such date as the Commissioner may, by notification, specify;

Provided that different dates may be specified in respect of different categories of registered dealers.

(2) deleted

(3) Every registered dealer shall furnish to the prescribed authority, on or before the due date, a true and complete return in respect of every financial year in the form and manner prescribed.

Explanation : In this sub-section, "due date" means -

(a) the 31st day of December of the year following the year to which such return relates in the case of the following classes of dealers :

(i) a company within the meaning of the Companies Act, 1956 or

(ii) a person, other than a company, whose accounts are required, under this Act or under any other law, to be audited or where the report of an accountant is

required to be furnished under section 54;

(b) the 31st day of July of the year following the year to which such return relates, in any other cases.

31. Assessment or Re-assessment of Tax of escaped turnover-(1) If the prescribed authority is satisfied, either on the basis of audit conducted under sub-section (3) of section 26 or otherwise, that reasonable grounds exist to believe that, in respect of any assessment under this Act or under the Bihar Finance Act, 1981, (Bihar 5 of 1981) as it stood before its repeal by section 94, during any period, any sale or purchases of goods liable to tax under this Act or the said Act, for any reason, has been under-assessed or has escaped assessment, or has been assessed to tax at a lower rate, or any deduction there from has been wrongly made, or an input tax credit has incorrectly been claimed; the prescribed authority shall, in such manner as may be prescribed and after serving on the dealer a notice in the form and in the manner prescribed, proceed to assess or re-assess, as the case may be, the tax payable by such dealer within four years from the expiry of the year during which the original order of assessment or reassessment was passed, in a case where the dealer has concealed, omitted or failed to disclose full and correct particulars of such sale or purchase or input tax credit, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice under this sub-section was a notice under section 27 :

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

(2) (a) The prescribed authority shall, in a case where the dealer has concealed, omitted or failed to disclose full and correct particulars of such sale or purchase or input tax credit, direct that the dealer shall, besides the amount of interest payable under subsection (10) of section 24, pay by way of penalty a sum equal to three times the amount of tax which is or may be assessed on the turnover of sale or purchase which escaped assessment.

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

(c) No order shall be passed under this sub-section without giving the dealer a reasonable opportunity of being heard.

(3) Any assessment or re-assessment made and any penalty imposed under this section shall be without prejudice to any action, which is or may be taken under section 81.

Bihar Value Added Tax Rules, 2005

21. Scrutiny of Returns.- (1) The officer Incharge of the record shall ensure that

the full information contained in returns is entered in register in form VR-IV.

(2) The authority specified in sub rule (1) shall, before the expiry of the due date within the meaning of sub-section (3) of Section 24 of the Act, or the extended date within the said meaning scrutinize them in accordance with the provisions of sub section (1) of section 25.

Provided that the return under sub-section (3) of Section 24 shall be scrutinized before the end of the year following the year to which such return relates.

(emphasis supplied)

8. A perusal of Section 31(1) of the Act shows that the period of limitation is four years from the expiry of the year during which the original order of assessment or order of re-assessment was passed. As per the petitioner, no order of assessment was earlier passed, therefore, it is case of deemed assessment on filing of the annual returns.

9. Sub-section (3) of Section 24 of the Act contemplates that every registered dealer shall furnish to the prescribed authority, before the due date, a true and complete return in respect of every financial year. The due date is 31st December of the year following the year to which such return relates which includes a company, such as the present petitioner. In respect of other assessee, 31st day of July of the year following the year to such return relates is the due date.

10. In terms of Rule 21 of the Rules, the return is required to be scrutinized before the expiry of the due date within the meaning of sub-section (3) of Section 24 of the Act. If the provisions of Section 24(3) of the Act and Rule 21 are read together, it will show that in respect of assessment year 2007-08, due date would be 31st of December, 2009. Therefore, the assessment could be completed within four years of 31st of December, 2009, i.e. 31st of December, 2013. The order of assessment has been passed on June 20, 2013 is thus within the period of limitation.

11. Another argument raised by learned counsel for the petitioner is that the order purported to be passed on 20th June, 2013 was not, in fact, passed on the said date as there is no reason as to why the notice of demand was delivered to the petitioner in 18th May, 2016. He relies upon Supreme Court order reported as [1994] 93 STC 406 (State of Andhra Pradesh v. M. Ramakishtaiah & Co.); and order an order passed by the Division Bench of Andhra Pradesh High Court reported as [2005] 142 STC 496 (Sanka Agencies v. Commissioner of Commercial Taxes, Hyderabad).

12. We do not find that any such presumption can be raised in the present case. The order of assessment itself stipulates that none has put in appearance on behalf of the petitioner even though notice under registered post was sent. A registered notice sent on the proper address carries presumption of delivery in terms of Section 27 of the General Clauses Act. Still further, merely because demand notice was sent after three years will not raise a presumption of

antedating the order as it is categorically mentioned in the counter affidavit that the demand notice was prepared on the same date, but due to clerical mistake it could not be sent. Therefore, mere fact that the demand notice was sent in the year 2016 will not be enough to raise presumption that the order has been antedated.

13. The order of the Supreme Court in M. Ramakishthaiah & Co.'s case (supra) arises out of the fact where the Department could not offer any explanation as to why there was delay in sending demand notice, but a perusal of the demand notice in the present case shows that it bears the same date as the date of order, but it has been delivered to the appellant only thereafter. Therefore, the explanation of the Department in the counter affidavit cannot be said to be unreliable.

14. Consequently, we have no reason to doubt that the order of re-assessment was passed on the same date which bears the date, i.e. 20th June, 2013. In view of the above, we do not find any merit in the present petition. The same is dismissed but it shall be open to the petitioner to avail statutory remedy under the Act in accordance with law.

Ahsanuddin Amanullah, J.—I agree.