

(2020) 12 PAT CK 0037

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 4073 Of 2003

Associated Cement
Companies Limited

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: Dec. 4, 2020

Acts Referred:

- Bihar Finance Act, 1981 - Section 19, 19(1), 25(3)
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J

Bench: Division Bench

Advocate: Ramesh Kumar Agrawal, A.K. Rastogi

Final Decision: Allowed

Judgement

Petitioner has prayed for the following relief(s):

â€œ(a) To issue a writ of certiorari for quashing the order dated 29.6.1996 passed by the re-assessing authority as contained in Annexure-3 by which

he has initiated a proceeding under Section 19(1) of the Bihar Finance Act and to further quash the order dated 26.11.1996 of re-assessment for the

period 1991-92 as contained in Annexure 4 and order dated 30.6.1997 passed by the Joint Commissioner, Commercial Taxes (Appeals) Central

Division, Patna by which he has dismissed the appeal bearing Appeal No ST/SL 75 to 80/97-98 as contained in Annexure-5 and order dated

30.03.2002 passed in Revision Case No. PT 552 to 557/97 by the Commercial Taxes Tribunal, Bihar, Patna as contained in Annexure-6 by which the

revision preferred by the Petitioner has been dismissed.

(b) To issue a writ of mandamus commanding the respondents to refund Rs. 69,87,433/- which they have realised by levying tax on packing material

i.e., Jute Bags and H.D.P.E. Bags (more than 4% and 7% respectively) and further direction to refund by allowing the claim of the Petitioner

company by adjusting the discount amounting to Rs. 1,24,21,139.66/-.

(c) To issue a direction to give effect to the provisions of Section 2 of Bihar Ordinance No. 3 of 2002 prospectively and to refund the amount which

the petitioner had been forced to pay on account of packing and material charges at the rate of levy of tax as if they were cement.

(d) to any other relief or reliefs for which the petitioner is entitled.â€

2. With respect to the financial year 1993-94, proceedings for re-assessment were initiated on the basis of inspection report dated 5th of December,

1995. The Re-assessment proceeding initiated under the provisions of Section 19 of the Bihar Finance Act, 1981 (hereinafter referred to as the Act)

culminated with passing of the order dated 26th November, 1996.

3. Aggrieved thereof, the petitionerâ€™s appeal, so preferred, stood partly allowed by the appellate authority vide order dated 30th of June, 1997

passed in Appeal Case no. ST/SL-75 to 80/1997-98 titled as The Associated Cement Company Limited Versus the State of Bihar with one issue left

open to be decided afresh on a limited order of remand.

4. Aggrieved thereof, the petitioner preferred Revision Case Nos. PT-552 to 557/97 titled as The Associated Cement Company Limited Versus the

State of Bihar before the Commercial Tax Tribunal, Bihar, Patna which stood dismissed on 30th March, 2002.

5. Noticeably, the appellate authority, on a limited issue, has remanded the matter to the Assessing Officer for consideration afresh, which

proceedings, as we understand are pending.

6. Independently, assailing the order passed by the Tribunal, petitioner has preferred the present petition filed under Article 226 of the Constitution of

India.

7. Before this Court, the petitioner raised four issues:-

(i) The order of reassessment is bad in law inasmuch as there was no independent material/information available with the Assessing Authority,

warranting re-assessment under the provisions of Section 19(1) of the Act;

(ii) The Assessing Officer in the re-assessment proceedings erroneously carried out the assessment on composite basis. Such assessment ought to

have been done separately, in terms of Notification no. 14545 dated 26th of December, 1977, wherein the incidence of tax on item "cement"™

was notified to be 11% leviable as such, and Notification No. SO No. 1020 dated 23rd of August, 1984 whereby the incidence of tax leviable on the

gunny bags was to be at the rate of 4%. Such assessment on composite basis is as a result of the amending statute i.e., The Bihar Taxation Law

(Amendment and Validation) Act 2002, validating the incidence of tax on retrospective basis;

(iii) The assessing officer as also the authority below erred in ignoring the material pertaining to the discount (trade-discount) allowed by the petitioner

to its vendors. It is on this issue, with respect to certain years, matter stands remanded to the Assessing Officer.

(iv) The initiation of proceedings for imposition of penalty and passing an order in terms of Section 25(3) of the Act, based solely on the order of re-

assessment is bad in law.

8. We have heard the parties at length and after some time, finding the Court not to be in favour on the principle, i.e. the first issue - the action of the

authority in initiating proceedings for re-assessment under Section 19(1) of the Act without any material, withdrew such plea, with a further request of

the matter being remanded to the Assessing Officer, more so in view of such order of remand with respect to certain financial years already made by

the Appellate Authority, wherein, transactions identical in nature took place.

9. Effectively, what the petitioner desires to do is (a) give up plea no.(i) of there being no independent material/information available with the assessing

authority prompting initiation of proceedings for re-assessment under Section 19(1) of the Act; (b) the matter be remanded to the Assessing Officer

for consideration afresh on issue no.(ii)- whether imposition of tax is to be on the basis of composite or separate sale; non-accounting of trade

discount; and imposition of penalty.

10. Shri A. K. Rostogi, learned counsel for Revenue, under instructions, agrees with such submission made on behalf of the petitioner, with the

condition that this Court may expedite the hearing with a direction to the Assessing Officer to decide the issue at the earliest and the petitioner fully

co-operating in producing material, if any, in support of its plea. He clarifies that order of reassessment is independent of the amending Act.

11. Under instructions, Shri R. K. Agrawal, learned counsel for the petitioner, agrees for such suggestion made by Shri A. K. Rostogi, learned counsel

for the Revenue.

12. No other point is raised by learned counsel for the parties.

13. As such, the present petition is disposed of on the following mutually agreeable terms:-

(a) Impugned orders dated 26th November, 1996 in Regd. No. St. 3 (R) passed by the Commercial Taxes, Special Circle, Patna; dated 30.06.1997 in

Case No.-ST/SL 75 to 80/1997-98 passed by the J.C.C.T.(Appeal), Central Division, Patna; dated 30th March, 2002 in Revision Case Nos. PT-552 to

557/97 passed by the Commercial Taxes Tribunal, Bihar, Patna are quashed and set aside.

(b) The matter is remanded back to the Assessing Authority for consideration afresh;

(c) The parties undertake to fully co-operate and not take any unnecessary adjournment;

(d) They undertake to appear before the Assessing Officer/Assessing Authority under the provisions of the Act on 14th of December, 2020 when a

date shall be fixed, enabling the parties to produce material, if any, in support of their contention(s);

(e) Not more than two opportunities shall be afforded to the petitioner/Respondent to place the material in support of their contention(s);

(f) Since the petitioner has given up the plea of non-maintainability of proceedings for re-assessment under Section 19(1) of the Act, the Authority

would not be required to examine such aspect.

(g) The hearing, if so required, shall be conducted through a virtual mode and positively concluded within the current financial year i.e. before 31st of

March 2021;

(h) Since the petitioner has already deposited the component of tax as per the current assessment, no further tax is due and payable to the revenue, as

such matters can be heard and decided;

(i) The authority shall pass order on merits, assigning reasons, copy whereof, shall be supplied to the parties.

(j) Liberty reserved to the parties to challenge the same, if so required and desired, in accordance with law.

The writ petition stands allowed in the above terms. Interlocutory Application, if any, shall stand disposed of.