

[2022] 2 S.C.R. 876

Chandra Prakash Mishra
v.
FLIPKART INDIA PRIVATE LIMITED & ORS
(Civil Appeal Nos. 2859-2861 of 2022)

MARCH 30, 2022

[DINESH MAHESHWARI AND ANIRUDDHA BOSE, JJ.]

Mathou pangthokpada pankhei thamba (strictures): Louthokkhiba/Muthatpa----High Court na wakatloi (appellant) oiriba Deputy Commissioner gi mayokta mahakna matik chaba chebao (notice) Respondent No. 1 da pikhide amasung lallon-eetik toubagi khajna (commercial tax) loukhatnaba case asida maigei-nammatagi (ex parte) oiba yathang laothokkhibagi matangda mahakna maram chare haiduna thamkhiba wafamsing kakthatpa---Mahakna Deputy Commissioner oiba matamda pangthokkhiba amasung toukhidaba thabak singga mari leinana thabak sing pangthoknaba cherol thokkhiba---Warep: Aranba khudingmak law na yadaba natraga maram chadana louthokpa yathang singbu pukchel sengna toukhide natraga lanna toukhi haiba yade---Wakatloi (appellant) asina khajna khomgatnaba leingak ki thou puba ama oina khajna khomgatnaba semkhiba (assessment order) matamda Respondent No. 1 gi register touraba leifam leikhide---Mahakna nakal namatagi (ex parte) khajna khomgatnaba yathang laothok khibabu touge haina toukhibani haiba yaroi natraga pukchel sengna toukhide haibasus yaroi---Mee amada thajaba manghanbagi maram, maru oina leingak ki authority amada khajiktang oirabasu soikhiba natraga aranba ama leifam thokpani---Wakatloi asida aranba toukhibagi khudam amata record ta fangde---High Court na hiram asida maram chadana akanba mityeng changbagum toukhi---Hiram asibu yamna pakthok chaothok handuna case asigi achangba senfam (cost) puthoknaba yathang touba, leingakna cheirak pinaba thabak paikhatpa (departmental action) amasung wakatloi (appellant) asida quasi-judicial oiba mathou pangthokpada matik chabra haiduna neinarubagi mathou tade---Respondent No. 1 na State Legal Services Authority da case asigi achangba senfam Rs. 2,00,000/- thamjan gani--- Appellant ki maiyokta thamkhiba athingba pumnamak amasung waram sing kakthatle.

Wakat cherolsing asida Court na ayaba pire.

Warep: 1.1 Singnarakliba ordersing (impugned orders) asigi hangningngai oiba wahangsing kakthatle amasung case asigi achangba senfam pinaba matik chaba order pibada Respondent No.1 masana yajare [Para 11][889-D-E]

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1.2 High Court na tarik 29.02.2016 gi order da machang oiba saruk kharagi manungda thamkhiba wafam sing achumbani haina lourabasu amadi maduna khajna khomgatnaba laothok khiba nakal namatagi order sing (ex-parte assessment order) matou karamna khajna loukhat kani haiba, masigi mathakta yetnariba thabak mafam gi leifam hongnabagi cherolda ayaba pikhidaba asida High Court na yakhide. High Court na yakhidabagi maramdi mari leinaba chatnapathap sing, writ petition asida yaoriba machak singda yumfam oiduna neinaraba matungda fanglakpaduni [Para 12] [889-F-H]

1.3 Hiram asi mapung oina neinaraba matungda High Court na mari leinaba leingakki thouburel, maru oina wakatloi na yetnariba mathousing pangthoklibadu law gi matung ina toukhide natragra maong-maril naikhide natragra law na yakhide natragra atamnana toukhi haina lourabasu natragra fangliba machaksing asina taklibadi leingakna na touge haina touba natte, natragra high Court na hairiba pandam fangnaba touba thabakki maong (tactics) sijinnarabasu aranba thabak khudingmak, law na yadaba natragra atamnana thokpa order/thabaksing pangthokpada pukchel sengna toukhide natragra minamduna toukhi haiba yaroi. [Para 13] [889-H;890-A-B-]

1.4 Chathariba case asida tasengnamak respondent no 1 na yetnariba thoudoksigi (alleged event) mamang tha taramathoi (11) watlingeida thabak mafam hongnabagi cherol thajinki; amasung appellant asina khajna loukhatnabagi yathang cherol (assessment order) thokpa matamda leingakki thouburel oina respondent no 1 gi ming challaba leifam (registered address) record ta leiramde, mahakna khajna loukhatnabagi nakal-namatagi (ex parte) oiba yathang cherol thokkhibadu touge haina toukhide natragra pukchel sengna toukhide haiba yaroi, maramdi magi office tagi thengkhang kayarakta respondent no 1 da chebao pinaba magi ming challaba leifam (registered address) amasung Ghaziabad ta hongle hairiba leifam da thakhibani. Karigumba mahakna chebao pinaba hotnaribasing asi law na yade haina High Court na hairabadi natragra maong-maril naide hairaba, Court asina singnarakliba thabak-thouongsingdu touge matagum toukhi natragra pukchel sengna toukhide hairibasing aduda ayaba pibasi aruba oiri. [Para 14][890-C-E]

1.5 Appellant asina khajna loukhatnabagi leinakki thouburel (Assessing Authority) oiringeida khajna khomgatnabagi semkhiba cherolsing (proceedings) matam leptana kuina thamba ngamkhide. Respondent No 1 gi asoibasing ahanbada tha taramathoi (11) faoba lallon-eetikki (business) leifam hongnaba mathousing (registration) toukhide, masibu leingakki matik chaba thouburelna (appellant nataba) matam thengthana tharakpagi yakhidabasi thaoidaba yade.

[Para14.1] [890-E-F]

1.6 Appellant na khajna khomgatnaba leingakki thouburel(Assessment Authority) oina thokkhiba

makha tarakpa order dated 04.05.2016 asidasu mathoutaba khetnabasinga loinana mathakta thamkhiba wafamsing chap mannaba mityeng thamba yai, adubu order dated 29.02.2016 asimaktada appellant na leifam hongnabagi pisillakpa cheroldu High Court na paotak pirakpagi matung inna khannanaba matam khara ngairamba yabani natraga Commissioner dagi paotak louramba yai, asigumba aranbasing natraga mahakki mageidagi chitha-nanthahoubasing asibu fattaba wakhal attraga pukchel sengdabani hana khanbadi yaroi. [Para 15] [890-F-H]

1.7 Kanagumba mee amada maru oina law gi makhada semkhiba thouburel (statutory authority) amada pukchel sende hainabagidamak magi pukningda aranba kharadang natraga asoiba kharadagi henna leifam thokpani. Tasengna aranba touraknabagi wakhallon amatta record ki matung inna appellant sida leite, khajna loukhatnabagi leingakki thouburel ama oina mahakna toukhiba/toukhidaba thabaksingdubu yade hainabagi maram leite. [Para 16] [891-A-B]

1.8 Singnarakliba yathangsing (impugned orders) asida yaoriba wahang hangningai oiba sarukta High Court na akanbe mityeng thambagum touri, masi leiriba thoudoksing amasung oirakliba fivamsing asida maru oikhide. Khangnaraba wafam amana, appellant masamak ahanba tharakkhiba Writ Petition ani asida party oina yaokhide amadi Writ Petition asida pumnamakta chatnaba yaba yathang (common order) amana warep takhi. Appellant masamak case asida party oikhidaba, mahakki warol sandokna hainabagi khudongchaba fangdana leiringeida masamakta wafamsinging (comment or remarks) chatnanaba thamkhibasi toufam thoktabani. Ahumsuba Writ Petition asida appellant masamak party-respondent oina yaokhibasi mingjan loisang (registering authority) na thabak mafam hongnabagi anouba leifamda ayaba piduna ming challaba hek matungda mahakna order dated 04.05.2016 handokkraba amasung High Court ta lanjare haikhrabagi matungdani, hiram asi matang aduda loisinba yarambani; amadi yamna chaothokhanduna case asigi achangba senfam (cost) pinaba order tahanba,loishangi oiba cheirap (departmental action) loukhathanba, appellantsi na leingakpagi amasug wayelgi thoudang (quasi-judicial) loubada matic chabra haibanachingba maru okhide. Wafamsingsi fongdokkhraba matungda, singnarakliba order animakta thamkhiba mathou pangthokpada pankhei pikhiba (strictures) amasung thamkhiba warolsing kakthatpaga loinana case asi loisinbada matik chare.

[Para 17] [891-B-F]

1.9 Case asigi achangba senfam (cost) gi matangda respondent no 1 gi mahutta pukchel sengna fongdokkhibasi thagatningai oi. Masi matic chare haina loure, maram aduna respondent no 1 na Uttar Pradesh State Legal Services Authority da Rs 2,00,000/- thijinnaba yathang pire. Appellant gi mayokta thamkhiba warolsing pumnamak kakthatle amasung

singnarakliba yathangsing (impugned orders) da yaoriba wahanggi saruksingsida laothokkhiba thabaksing natraga neinakhibasing chatnahandre. [Paras-18-20] [891—F-G; 892-A-B]

V.K. Jain v. High Court of Delhi (2008) 17 SCC 538 :
[2009] 11 SCR 907--- referred to.

Case Law Reference

[2009] 11 SCR 907

Referred to

Para 20

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2859-2861 of 2022 .

High Court of Judicature, Allahabad na Writ Tax No. 546 of 2016 gi Miscellaneous Civil Writ Petition Nos. 80 amasung 168 of 2016, dated 02.08.2016 da laothokkhiba Judgment and Order dated 29.02.2016 dagi louthokpa.

Pallav Sisodia, Sr.Adv., Praveen Agrawal, Gautam Kumar Latta, Mrs. Kiran Mahota, Advs.,Appellant gi maigeida.

Tarun Gulati, R.K.Raizada, Sr. Advs., Kishore Kumar, Manish Rastogi, Rony Oommen John, Bhakti Vardhan Singh, Advs., Respondents singgi maigeida

Court ki Wayen (Judgment) laothokkhiba :

DINESH MAHESHWARI, J.

1. Case asi khannabada ayaba pire.
2. Appellant na Wakat Cherolsing (Appeals) asida houjik Joint Commissioner, Commercial Tax, Moradabad da thoumi oiriba appellant asina High Court of Judicature, Allahabad na Writ Petition Nos 80 of 2016 amasung 168 of 2016 da takhiba order dated 29.02.2016 amasung Writ Tax No. 546 of 2016 da takhiba order dated 02.08.2016 asigi mayokta wahang thangatlakli.
- 2.1 Yetnariba order sing (impugned orders) asina appellant da cheitheng pire maramdi mahakna Deputy Commissioner, Commercial Tax, Range-II, Sector 2, Noida oiringeida

nakal namatagi (ex parte) oiba khajna loukhatnabagi order thokkhiba amasung khajna khomgatnabagi cherolsing Uttar Pradesh Value Added Tax Act, 2008 gi makhada thabaksing Writ Petitioner gi (houjikna respondent no 1 oiriba) mathakta loukhakhi amadi masina maram oiraga magi mayokta ayet-apan piba warolsing thoktuna mahakna toukhiba amadi toukhidaba mathousing ga mari leinana paotak (directions) kayasu pikhi.

3. State nattraga Writ Petitioner na impugned order sing asigi mayokta wakat thanggatlakkhide. Maram aduna thokkhiba thoudoksing pak-chaona neinabagi mathou leitire. Houjik mari einariba wafamsingdi makhada piri :

- 3.1 Writ Petition No. 80 of 06 gi khuthangda Writ Petitioner na magi mayokta kajna khomgat-Nabagi leiriba thouburel (Assessing Authority) oiriba Appellant na nakal namatagi (ex parte) oina kajna loukhatnaba thokkhiba cherol aduda singnarakhi. Writ Petition asigi paokhum oina Loishanggi mahut sillaga hairibadi Writ petitioner na leifam hongnabagi tharakpa cheroldu dated 02.09.2014 da ayaba pikhide, mara aduna ex parte order maram chana tangafadana pifam thokpa chebao (notice) pikhraba matungda thokpani haikhi.

- 3.2 Mingjan Loishang (Registering Authority) na (Appellant nataba) thokkhiba leifam hongnabagi haija-warol yakhidaba order dated 02.09.2014 adu atoppa writ petition no. 168 of 2016 da singnaduna tharakkhi.

1. Matang asidagi 'UP VAT Act' haina khangnare.

2. Respondent No 1 na tharakpa (file tourakpa) writ petition sing asida laothokhipa impugned order sing.

Paring chumna paodamnaba and piriba tangkak aduda, respondent no. 1 asi 'writ petitioner' haina fongdokli.

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- 3.3 Matou asumna, mapum oiba samlappa wafamdi nakal namatagi (ex parte) amadi matam khara-gi (provisional) oina thokhiba khajna loukhatnabagi order dated 15.12.2015, masibu khomgat-nabagi thourangsing amasung leifam hongnabagi haija-warol yakhidabgi order 02.09.2014 asi High Court da singnaduna Writ Petition No. 80 of 2016 amasung Writ Petition No. 168 of 2016 tharakkhi. Khangnaraba wafamdi Appellant asina Deputy Commissioner Tax, Range-II, Sector-2, Noida oringeida mathakta haikriba ex parte order asi khajna lepnaba thouburel (Assessing Authority) oina thou puringeida thokkhibani. Adum oinamak, mathak ta pankhriba leifam hongnabagi cherol yakhidabagi order asi mingjan loishandggi thouburel oiriba Assistant Commissioner, Commercial Tax, Division-2 Noida na thokkhibani.
4. Mathakta pankhriba Writ Petition sing asigi yetnariba wafam sing (issues) High Court na pumnamakta chatnagadaba (common order) order dated 29.02.2016 ta laothoklkhi.
 - 4.1 High Court na tasengnamak nakal namatagi yathang (ex-parte order) thokkhibadu petitioner da maram chana chebao (notice) piraba matungda thokkhide haina thengnakhi. Warol pum-namak khangjille, writ petitionerna hairakpada magi thabak mafam Noida dagi Ghaziabadda hongkhre haibasi department na cherol sing lousinba amasung e-pao sing masina thadokkhi haibasi tasengna khangkhi. State gi maigeidagi Ghaziabad ta chebao thanaba haibadi leikhi adubu High Court na chatna-kanglon gi matung inna matik chaba chebao (notice) natte haikhi.
 - 4.2 Maram aduna, High Court na nakal- namatagi (ex-parte) kajana lepnaba takhiba order dtd. 15.12.2015 chatnahankhide amasung khajna loukhatnabagi thourangsing kakthatkhi. High Court na writ petitioner gi leifam hongnabagi pisillakpa cherol yakhidabaga loinana order dated 02.09.2014 chatnahankhide amasung mingjan loishanggi thouburel da writ petitioner na achangba senfam (requisite fees) thihalaba matungda mahakna thabak mafam hongna-bagi dated 05.12.2013 da pisillakpa cherolda mathou taba thabak paikhatnaba paotak pikhi.
 - 4.3. High Court na yamlaba senfam Rs 49,82,01,250/- asi department na petitioner gi account tagi law gi ayaba yaodana louthokkhre haba khangkhi. Maram aduna Deputy Commissioner, Commercial Taxes, Range-II, Noida bu UP VAT ACT gi Section 40 gi makada kakfam thokpa tax kaklaba matungda senfamsing sendoiga loinana handoknaba paotak pikhi. High Court na writ petitioner da chebao piduna makhoida warol tanabagi khudongchaba fanghallaba matungda khajna nouna lepnabgi Assssment Authority ds Khudongcaba pikhi.
5. Mathakta thamkhriba singnarakliba amadi pumnamakta chatnagadaba (impugned common order) 29.02.2016 gi paragraph 34 faoba High Court na case asigi machang oiba yetnariba sing amadi party pumnamak na pukhat lakpa ayetpa sing neinakhi, makha tarakpada Court asina fanglakpa yetnariba machak singdagi khanglakpadi Writ Petitioner da matik chaba no-

tice pikhide amasung ex-parte order sing chatnaba yade haikhi.

6. Adum oinamak wafam asi loisindringeida High Court na asumna fongdokkhi madudi yet-nariba thabak sing haibadi maram chaba notice piduna ex-parte orders amadi thourangsing loukhat-khiba loinana department na touge haina Writ Petitionergi maiyokta toukhibani amasung Assessing Authority na aranba pambei sijinnaduna chatnariba rule thugaiduna chebao (notice) namduna chathankhi haina fongdokkhi.
- 6.1. Maram aduna, High Court na case asigi achangba senfam (cost) Rs. 2,00,000/- oihanduna department ki maigei dagi Writ Petitioner da pinaba thamkhi amasung Commissioner, Commercial tax, Lucknow bu ningkhatamna aranba toukhiba officer adugi mathakta thijinnaba amasung mana toukhibasingdu masana yahanbaga loinana magi mathakta thamkhiba senfam (cost) loukhatnaba khanghankhi. Appeal asida appellant na wahang pukhattuna yetliba Order dated 29.02.2016 da yaoriba saruksing makhada piri:
 - “35. Waroisin puraktringeida eikhoina yenggadabasi respondents na khajna khomgatnabagi loukhatpa thourangsing maong, senfamsing asibu petitioner gi Bank account tagi hathu-hathu louthokkhibaduni, masi chang taba amasung Act ta yaoriba chatnarol-singbu khonggaonabani. Eikhoina khajnagi chang onnabagi chahising (assessment year) 2011-12, 2013-14 amasung 2014-15 asigi petitioner da matik chaba chebao (notice) pidana nakal namatagi (ex parte) oiba khajna loukhatnabagi order sing thokkhi haiba khangle. Appeal asida khajna loukatnaba thourangsing asi petitioner gi thabak mafam oikhidraba leifam aduda masa laknabagi chebao(summon) thakhi haiduna atenba maram asida chatnahankhide. Wafamsingsi khanglafaoda respondents na atamnana matam kharagi oiba April dagi October,2015 faobagi khajna loukhatnaba chebao petitioner gi Noida da leiba address da, mahakna thabak (business) toudre khanglafaoda thakhibani. respondents na petitioner gi thabak mafam Noida dagi Ghaziabad ta hongkhre haibasi makhoina chebao pinaba hotnabada mai paktabaduna khanglammi adubu matungdasu touge matagum Noida gi leifamda chebao thajinkhi. Assessing Authority na loukhatliba asigumba petitioner da chebao pinabagi thouong asi Rule 72 bu chaona indabani.
 36. Eikhoina masisu thengnare madudi chebao pinabagi thabak pumnamaksi numit marini (4) gi manungda pangthoktuna chebao fangnabagi attoppa lambi haibadi amuktada post office gi khuthangda registered post ka loinana fangle haibagi chening hallaknabagi khudongchabasu loukhide. Khajna khomgatnabagi assessment order da hairibadi masigi cherolsing (proceedings) sem-sabagi ahanba amasung aroiba wafam fongdoknabagi (Hearing) gi numit dated 10.12.2015 oikhi loinana assessment order na tarik 15.12.2015 ta laothokkhi. Counter affidavit ki matung inna khajna loukhatnabadi yathang adu Noida gi leifam da thakhi. Masi respondnts na atamnana bank ta taksinduna petitioner gi atonba senfam Bank gi thouburoi singda taksinduna loukhatnaba (garnishee notice) pangthokkhibani. Respondent na namduna aranba pambeina nakal nammatagi oiba khajna loukhatnabagi yathang thoktuna, petitioner da masibu maong chumna youhanbagi mahutta magi bank account tagi senfam lounaba hotnaribasida Court na angankpa pokee. Asigumba thaoi- usittaba, touge matagum Commercial Tax Department na touraba amadi chatnagadba chebao/service natheiduna yamlaba senfamsing khomgatlabadi achouba lanlon-ettik- ki loishang mayam thabak toubada awaba oigani. Asigumba lanlon-etikki loishang - shing Uttar Pradesh State ki mapanda namduna honghankhigani.

37. Matung tarakpada petitioner gi case ki achangba senfam (cost) pifam thokle. Writ Petitioner asi Rs. 2,00,000/- (Rupees 2 lakhs) gi senfam (cost) pihanbada ayaba pire , senfam asi Commercial Tax Department na petitioner da yathang asigi certified copy ama hafta ani gi manungda Court ta pisinlklaba matungda pigadabani. Karigumba senfam asi pidaba tarabadi petitioner na matik chaba wakat cherol ama petition asida thaba yagani.
38. Commercial Tax Commissioner, Lucknow na thoudok sing thigatnaba, aranba touba officer gi mathakta masana yahanbaga loinana senfan sing loukhatnaba hotnabada ayaba pire”.

7. High Court na yathang asi laothokla faobada appellant na khajna lepnabagi thouburel oina (Assessing Authority) atoppa assessment order dated 04.05.2016 ama writ petitioner gi mayokta semkhi. Writ Petitioner na yathang asigi mayokta High Court ta atoppa writ petition ama haibadi Writ Tax No. 546 of 2016 thakhi. Masigi makha tarakpa writ petition asida houjik appellant oiribasi respondent no.1 oina yaori.

7.1. High Court na Writ Tax no. 546 of 2016 ga mari leinana tarik 11.07.2016 da neinakhibagi manung channa houkhiba thoudok sing maru oina order dated 29.02.2016 da hanggatna yengkhi amadi khetnaba maram amada houjik appellant oiribasina yetnariba assessment order dated 04.05.2016 da laothoknaba hotnakhi, masi tarik 29.02.2016 da laothokkhiba order da hairibaga channakhide. High Court na case asigi matangda chebao pibaga loinana yetnariba assessment order asigi matung tarakpa notice chatnahankhide, loinana makhagi warol sing asi fongdokkhi:-

“1. Asumna fongdokkhi madudi petitioner gi ming chanlaba leifam (registered address) asi Ghaziabad ta hongkhre amasung Commercial Tax, Noida gi Deputy Commissioner na assessment semnaba pankhei gi (jurisdiction) manungda leite, masi Court asigi Judgement dated 29.02.2016, Flipkart India Pvt. Ltd. Vs. State of U.P. and others amasung 2016 NTN (Vol.60) 313 da fongkhi (Report toukhi), Judgment asidasu Court na Noida gi loishang pairiba thouburel na petitioner/company gi thabak mafam haibadi maming pankhatlaba leifam/office asi Gaziabad ta hongkhraba matungda khajna loukhatnabagi cherolsing semkhibasi pankheigi wangmadani (jurisdiction gi wangma); adum oinamak Respondent no 1 na Noida da leifam oiri haiduna chebao thanabagi thourang loukhatkhi, matungda yetnariba yathang (impugned order) asi laothokkhi.

2. Asumna pukhatkhi madudi ayetpa pirakliba yathang asi (impugned order) law gi manung channa aranbani, toukhiba thabak singdu pankhei (jurisdiction) gi wangmani amasung Court asina laothokkhiba Judgement ta ayetpa pibani amadi Judgement asida mari leinaba officer da mathou pangthokpada athingba kaya piduna Court na Rs.2,00,000/- case ki achangba senfam pinaba khanghankhi.

3. Aikhoina hiram asi aruba amani haina thengnei. Respondent No.1 masamak mari leinaba cherol singga loinana Court asida tarik 02.08.2016 ta lakkadabani. Mahakna Writ Petition da yaoriba warol singgi paokhum mathanggi numitta (next date) pisanlakkadabani.

4. Makhataba yathang laothoktribafao yetnariba khajna loukhatpagi yathang (impugned assessment order) dated 04.05.2016 amasung thokkhiba Notice dated 07.04.2016 chatnaroi.”

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7.2. Hiram asi High Court na makha tana khannanaba tarik 02.08.2016 da pukhatkhi amasung Department gi maigeida lepliba counsel (advocate) na houjik appellant oiribasina tarik 23.07.2016 da yetnariba khajna loukhatnabagi yathang adu louthokkhre haina fongdokkhi, maram aduna writ petition asi tasengnamak chatnararoi haikhi. Court ta masamak lakliba appellant gi mahutta asumna fongdokkhi madudi mahakki maigeida asoiba leikhre amasung mabu ngakpinaba court ta hai-ja cherol pisingani fongdokkhi.

7.3. Adum oinamak High Court na appellant gi thabak khuttou maru oina athingba kaya (strictures) thamlaba matungda mahakna toukhiba/toukhidaba thabaksing, senfamsing thihannaba thamkhiba order dated 29.02.2016, masina maram oiduna magi mathakta wahang hangningai oi haina lumna loukhi. Asumna appellant gi mathakta Rs. 50,000/- gi senfam thinaba khanghanbaga loinana High Court na Department ki oiba cheirak loukhattuna yamna thuna aroiba puraknaba hotnaba amasung Department asina asuk maru oiba leingakki amasung wayel gi thoudang (quasi-judicial) ga mari-leinabasing pangthokhanbada matik chabra haibadu khannanaba fongdokkhi. Mari leinaba yathang dated 02.08.2016 gi saruk makha da thamli :-

“13. Additional Commissioner, Commercial Tax, Noida na Commissioner, Commercial Tax ta dated 29.06.2016 da achumba wafam khanghanlaknaba cherol thakhi, madudagi Commissioner na dated 20.07.2016 da cherol eduna mingjan loishanggi thouburel da Court na paotak pirakpa matung inna matik chaba yathang thoknaba khanghankhi. Mingjan loishang na mari leinaba Act ki (Registering Authority) Section 17 (14)(a)gi makhada petitioner gi thabak mafam Noida dagi Ghaziabad ta dated 20.01.2013 tagi chatnaba hounaba yathang dated 23.07.2016 da thokkhi amasung matung tarakpada houjik Deputy Commissioner, Commercial Tax, Sector 7, Ghaziabad na petitioner gi Assessing Authority dated 20.01.2013 tagi oire, madugi hek matungda Respondent No.1 na dated 23.03.2016 da (sic) writ petition asida singlarakliba assessment orders dated 04.05.2016 louthokkhi.

14. Achumbamak thabak mafam hongnabagi cherol dated 05.12.2013 da pisillakkhi adubu respondent no 1 na dated 02.09.2014 da ayaba pikhide amasung hairida yathang/order asi Court na laothokkhiba Judgment dated 29.02.2016 da chatnahankhde.

15. Learned Standing Counsel na case asigi hourakfam maric chumna thamduna asumna fongdokkhi madudi writ petition asida yetnariba assessment order sing houjik respondent no 1 na Order dated 23.07.2016 gi matung inna louthokkhre, writ petition asi chatnararoi amasung kakthatpinaba haijakhi.

3 Dated ‘23.03.2016’asi type toubada soikhibani.Achumba dated ‘23.07.2016’ oire.

16. Adum oinamak aikhoina mangonda kari matic leiduna makha taba assessment order thoklibano, mahakna laothokkhiba hannagi yathang singdu Court asina petitioner gi thabak mafam hongnabagi tharakpa cherolduda pankheigi manung chande fongdokkhibani. Masigi paokhum oina respondent no 1 na yamna sangba counter affidavit ama tonganna tharakkhi. Masigi mathakta Court gi Judgment dated 29.02.2016 da yamna marik chumba tougadaba thabaksing fongdokla faobada mahakna chamamnaba karigino amasung kari maramgi respondent no 1 na dated 04.05.2016 da yamna thuna yetnariba assessment order sing laothokkhibano haibadu sandokna takpa ngamkhde.

17. Respondent no 1 masamak Court ta lakhibaga loinana magidmak lepliba Shri S.D. Singh, learned Senior Counsel na respondent no 1 gi maigeida aramba leikhre, madubu matic chana fongdokpasu ngamdre adubu respondent no 1 na ngakpinaba haijaribasida Court na khannabiduna chap chaba yathang pibinaba haijakhi.

18. Masigi wafam sing amadi thoudok sing asigi matung inna aikhoina mapung oina khangle madudi Respondent no 1 na law gi wangmada pukning changdabana maram oiduna namduna law court ta case soknahankhibani, masi khanglakpadagi yetnariba order singdusu louthokkhi amadi mabu leingakki thouburel (authority) oibada matik chadaba wafamsing Court gi order dated 29.02.2016 da thamkhi, adufaobada mahakna wafamsingdu cheksinna loukhide. Soknariba case asida respondent no 1 asi case ki senfam (cost) pihanbada matik chare. Masigi matangda order dated 23.07.2016 na yetnariba assessment order adu amuk hingat hankhibana makha taba yathang mathou tadre adubu respondent no 1 asina namduna petitioner bu case anirak thengna hanbagidamak aikhoina magi mathakta Rs. 50,000/- case ki ahangba senfam oina pinaba warep tare.

19. Aikhoina Principal Secretary, Trade Tax, UP Government da respondent no 1 na case asida touriba maong si haibadi hannagi Judgment dated 29.02.2016 da magi mathouda athingba kaya pikhiba, senfam (cost) pinabagi khanghanla faoda mahakna touriba thabak sing yengsinna khanghankhi amasung Commissioner Trade Tax da aramba touriba official singgi mathakta thijinnaba paotak pikhi, respondent no 1 na masagi mathou chumthoknaba hotnakhide amasung lallon-eetikki thabak toujariba petitioner da awaba cheitheng pikhi, magi mathakta yamna thuna cheirak pinaba amasung waroisin puraknaba khanghankhi. Principal Secretary, Trade Tax, UP Government na respondent no 1 asi leingak amasung wayel gi (quasi-judicial) asuk maru oikhraba thoudang pangthokpada matik chabra haibasi khannagadabani.

20. Yathang asigi copy ama makha taba thabak sing loukhatnaba thakhigadabani.

21. Writ Petition asi asumna yanakhre (disposed of)."

8. Appellant gi mayokta oikhiba mathakki order sing asida wahang hangladuna Mr. Pallav Shishodia, learned senior counsel na asumna haikhi madudi High Court na appellant gi mayokta aramba wafamsing fongdoktuna paotaksing pikhibadu toufam thoktabani, appellant na Assessing Authority oina laothokkhiba assessment ordersing da ayaba leikhide hairabasu magi maigeida aramba touge khankhide, mahakna law na ayaba piba mathousing matam chana assessment touduna matung tarakpa thabaksing toukhibani haina thamkhi.

8.1. Learned senior counsel na akanba wafamga loinana asumna fongdokhi madudi writ petitioner (respondent no 1) na thabak mafam hongnabagi hairibasida asoiba mayam leiri, maru oina dated 05.12.2013 da tharakpa cherol da 2013 gi January da thabak mafam hongnaba palli, masi UP VAT Act, Section 75 gi makha oikhide, toubatabu asigumba cherol asi tangngai fadana leifam hongba numittagi kunthrani (30 days) gi manungda thagadabani.

8.2. Appellant gidamak lepliba learned senior counsel na thengthana pisanlakkhiba cherol adu dated 02.09.2014 da yakhidre, Assessment Authority oiriba appellant na ming pankhat khraba leifam adu khaktada mathou tougadabani haina fongdok lamgadabani. Adubu masidi tasengle madudi respondent no 1 asi ming chanlaba leifamda fangba ngamdabana maram oiduna appellant na thamoi sengna mathou toujaduna chebao singdu Ghaziabad ta thanaba hotnakhi adubu High Court na matik chaba chebao (notice) natte haiduna loukhide.

8.3. Learned senior counsel na appellant asi Assessing Authority oina record ta leiba machak singgi matung inna mathou pangthokkhi hairamgadabani, amasung mahakna toukhiba thabak singdu pukchel sengde haiba yaroi. Learned senior counsel na matung tarakpa wafam singda mityeng thamkhi madudi leifam hongnabagi cherol du tarik 22.07.2016 da ayaba pikhi, department na leifam hongnabagi ayabadu dated 20.01.2013 dagi chatnaba hounaba loushankhi; khudakta mingjan loishanggi thoumi (Registering Authority) oiriba Assistant Commissioner, Commercial Tax, Division-2 Noida na order asi pass toukhraba matungda appellant asina pass toukhiba order dated 04.05.2016 adu leifam hongkhibana maram oiduna mahakki mathou toubagi wangmada (outside jurisdiction) oibana handokkhi. Learned senior counsel na yetlibadi leingakki matik charaba thouburel na asigumba order asi laothoktringeida appellant na record ta fangliba sing adugi makha ponna touramgadabani amadi mahakna touriba thabaksing pukchel sengna toude haiba yaroi. Asumna, singnarakliba order singda yaoriba mathou toubada athingba thamba amasung magi maramda haikhiba sing chatna hanbiganu haikhi.

8.4. Appellant gi maigeida lepliba learned senior counselna haikhi madudi leingakki thoumi-sing appellant masamak yaona pukchel sengna pankheigi (jurisdiction) manungda mathou toujaba singda UP VAT Act gi Section 67 na cheingak (protection) piri haina fongdokkhi.

9. Stateki maigeida lepliba learned senior counsel Mr. R.K. Raizada na High Court na laothokkhiba yathang sing chap chana inkhi, Court ki order dated 29.02.2016 gi matung inna inquiry pangthokkhi adubu Court asina laothok khiba yathang dated 27.01.2017 gi matung inna makha taba thabak sing leptuna leiri haina pukhatkhi.

10. Respondent no 1 (writ petitioner) gi maigeida lepliba Mr. Tarun Gulati, learned senior counsel na houjik appellant oiriba asigi maiyokta case amata respondent no 1 na lannai oina thakhiba leite, ahanbada tharak khiba petition ani adudasu lannai oibagi wafam yaode; maduda State amasung leingakki thoumising khaktagi maiyokta thakhibani maramdi mangonda da case asigi hearing tounaba amasung matik chaba chebao fangkhide haina fongdokkhi.

10.1. Learned senior counsel na makha tana haikhi madudi High Court na houjik oiriba appellant na khajna khomgatpigi thoumi (Assessing Authority) oibagi thoudang gi manungda pangthokkhiba thabaksing amasung mahakna pikhiba nakal nammatagi oiba yathang sing aduda ayaba pikhidabadu chummi haina fongdokkhi. Learned counsel na order dated 29.02.2016 gi atoppa saruktudi High Court na pikhiba mityengda haibadi respondent no 1 na tasengna

thengnakhiba awaba sing (harassment) amasung State gi thoumi singna matik chaba, law na yaba toufam thokpa thabak sing toukhide haibaduda yumfam oikhi. Learned counsel na matung tarakpa Writ Tax no. 546 of 2016 da appellant masamak party-respondent oikhi maramdi mahakna pass toukhiba order dated 04.05.2016 adu High Court na laothokkhiba yathang dated 29.02.2016 ga chayetnakhi haina fongdokkhi.

10.2. Learned senior counsel na chamna fongdokkhi madudi respondent no 1 na lannai oina appellant gi maiyokta nungaitaba amata leite amasung mahakna case gi achangba senfam (cost) High Court na pikhibabu lousinbagi wakhal leite amadi High Court na pirakpa paotak ki matung inna handorakkani haina thamkhi, masimasu haikhi madudi yathang dated 29.02.2016 gi matung inna respondent no 1 na Rs. 2,00,000/- gi senfam (cost) fangkhre aduga atoppa yathang dated 02.08.2016 gi matung inna Rs. 50.000/- adudi Court na athingba piba (stay order) leibana fangdri haina fongdok khi

11. Court ta pukhatliba wafam sing amasung record ta leiriba machak sing kupna khannaraba matungda eikhoina tasengna khangle madudi yetnariba orders singda yaoriba wahang hang -ningai oiba saruksing, case gi achangba senfam (cost) oina Rs. 2,00,000/- pigani hairibasida respondent no 1 na pukchel sengna louraroi haibanina masigi matang dasu chap chaba order thokpa yare.

12. Yetnariba order dated 29.02.2016 gi chatnaba yaba amasung chatnaba yadaba sing loinana leiriba machak sing khannaraba matungda fanglakpa wafam singgi matung inna amadi State na ayetpa piraktabana karigumba amatta haifam thoktre. Adum oidunasu eikhoigi mityengda High Court na laothok khiba order dated 29.02.2016 gi maru oiba sarukta yanarabasu haibadi nakal nammatagi oina (ex-parte) khajna loukhatnabagi order (assessment order), masibu loukhatnaba pangthokkhiba thabaksing amasung yetnariba thabak mafam hongbagi cherol da ayaba pikhidaba asida High Court na yakhidabani. High Court na mari leinaba chatna-pathap sing, thokkhiba thoudok singga loinana writ petition asida yetnariba sing asigi makha ponna ayaba pikhidabani.

13. Hiram asi mapum oina neinabada eikhoina khangle madudi High Court na mari leinaba leingakki thoumi singna haibadi appellant na pangthokkhiba yetnariba mathousing law gi matung inna toukhide nattraga maong maril naikhide nattraga law na yakhide nattraga atamnana touge haina pangthokkhi haina lourabasu fangliba machak sing asina oifam thokpa panthung amada purak khide madudi Assessing Authority nattraga Registering Authority gi maigei dagi atamnana toukhiba thabak nattraga toukhidaba amata leikhide nattraga High Court na sijinnaba wahei sing “pandam fangnaba cheksinna pangthokpa thabak sing” (tactics) toukhi haibasini. Aranba khudingmak, law na yadaba nattraga atamnana laothokpa order/thabaksing pukchel sengna toukhide nattraga minamduna toukhi haiba yade.

14. Chatthariba case asida respondent no 1 na ayetpa pirakliba thoudok sigi tha tara mathoi (11) gi manungda thabak mafam hongnabagi cherol pisankhi; Assessing Authority oina appellant asina assessment order sing sembada respondent no 1 gi ming chanlaba leifam (registered address) amata record ta leite, mahakna ex-parte assessment order semkhibadu touge haina nattraga pukchel sengna toukhide haiba yaroi, maramdi mahakna magi office tagi respondent gi ming chanlaba leifamda khanghan cherol (notices) amasung Ghaziabad ta hongkhre hairiba leifam asida che thanaba hotnakhi. Chebao thanabagi thourang sing hotnariba sida law na yade nattraga maong maril naide haina High Court na lourabadi yetnariba mathou sing toukhibadu atamnana toukhi nattraga pukchel sengna toukhide lourabadi aruba amani.

14.1. Appellant asina Assessing Authority oina khajna lounabagi thourang sing du matam kaktana loisandana thamba pamkhide. Masigi manung channa respondent no 1 na mathakta hairiba magi asoiba sing haibadi chaurakna tha tara mathoi (11) faoba thabak mafam hongnabagi thourang toukhidaba amasung mari leinaba leingakki thouburel na (appellant nattaba) haija warol yakhidabadu thaoidaba yaroi.

15. Appellant na Assessing Authority ama oina thokkhiba order dated 04.05.2016 asidasu mathakta thamkhiba wafam sing tangngaifadaba khetnaba singga loinana pansinba yai. Adum oinamak order dated 29.02.2016 asida Appellant na High Court na paotak pibagi matung inna leifam hongnaba tharakliba cherol du khannanaba ngairamba yai nattraga Commissioner dagi kari tougadabano haibadugi paotak louramba yabani, adubu amabu oirabasu, magi maigeidagi asigumba soikhiba nattraga aramba sing nattraga touhoudaba sing asi manghan-takhang nattraga pukchel sengde haibagi machak yaode.

16. Eikhoigi mityengda kanagumba mi amada maru oina law semduna thabakta onthoknaba leiriba lupna (statutory authority) aramba toukhre amasung pukchel sengde hainabagidamak apikpa asoiba nattraga aramba kharadi leifam thokpani. Appellant asina Assessing Authority oina toukhiba/toukhidaba thabaksingdu yafam thokte haira-faoda record ta aramba toukhre haibagi khudam amata fangde.

17. Yetnariba order sing (impugned orders) asigi wahang hangningai oiriba saruk singda High Court na akanba mityeng thambagum touri, masi thokkhiba thoudoksing amadi oiriba fibamsing asida maru oikhide. Khangnaraba wafam amana Appellant asi pumnamakta chatnaba order (common order) dated 29.02.2016 na warep pikhiba ahanbagi writ petition ani sida masamak party oikhide. Appellant masamak party oinasu yaokhidaba amasung magi wa tanabagi khudong chabasu pikhidaba asida lannai oina magi mathakta wafam sing fongdokpa yafam thokte. Appellant na order dated 04.05.2016 adu mingjan loishangna leifam hongbada ayaba hek pikhibaga amadi High Court ta ngakpinaba haijakhra ba matungda handokkhibani loinana order dated 02.08.2016 da warep takhiba ahum suba writ petition aduda party respondent oikhi; matang aduda case asi loisinba yabani, hirem asi ka-henna sangdokhanduna makha taba order sing thoktuna case ki achangba senfam (cost) thihanba, department na cheirak loukhathanba, appellant asi leingak amasung wayel bichar gi mathou (quasi-judicial) touhanbada matik chabra haibagi wafam sing thamlubagi mathou leikhide. Eikhoina wafam singsi fongdokpaga loinana case asi loisinbada matik chare amasung yetnariba order sing dated 29.02.2016 amadi 02.08.2016 da yaoriba appellant na mathou pangthokpada athingba thamkhiba sing (strictures), magi mathakta fongdok khiba warolsing kakthatle.

18. Case ki achangba senfam (cost) ka mari leinana respondent no 1 gi maigeida leplibana pukchel sengna fongdokpagidamak eikhoina thagatli. Oikhiba fibamsing asigi matung inna eikhoina matik chare khanduna respondent no 1 na Uttar Pradesh State Legal Services Authority da hairiba senfam Rs. 2,00,000/- asi thijinnaba yathang piri.

19. Mathakta thamkhiba tougadaba sing, yetnariba order singda appellant gi maiyokta haikhibasing amasung impugned orders da yaoriba wahang hangningai oiba mathakta haikhibasing asi kakthatle amasung chatnahandre.

20. Maru oina loukhat khiba thabaksing nattraga yetnariba orders singgi mathakta pankhriba saruksing asigi matung inna loukhatkhiba thabaksing maru oidre.

21. Appeal sing asi fongdokkhiba wafam singgi manung channa amasung mathakta thamkhiba tougadaba singga loinana ayaba pire.

Nidhi Jain

Appeal singda ayaba pire

4 Court na asoiba, aranba amasung chitha-nanthahoubasing chumthoknaba hotnagani amasung marileinaba order sing leiriba maong-matougi makha ponna laothokkani, aranba khudingmakta namduna yahanbagi mathou touroi ('crack the whip') [vide the observation of this Court in V.K.Jain v. High Court of Delhi: (2008) 17 SCC 538].