**Sanjay Kumar Vs. State of Bihar and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/128829

**Court** : Patna

**Decided On :** Feb-24-2003

**Judge** : Nagendra Rai and R.S. Garg, JJ.

**Appeal No.** : CWJC No. 1812 of 2003

**Appellant** : Sanjay Kumar

**Respondent** : State of Bihar and ors.

**Advocate for Def.** : R.K. Dutta, Standing Counsel IV

**Advocate for Pet/Ap.** : Navniti Pd. Singh, Adv.

**Disposition** : Application allowed

**Judgement** :

1. The petitioner has challenged three different orders with regard to three different circles. In our view, the petitioner is liable to pay three sets of court fee. Two sets of court fee should be paid by tomorrow failing which the writ application shall stand rejected without further reference to a Bench.

2. The petitioner is engaged in the business of manufacture and wholesale supply of country liquor. He is aggrieved by the order dated September 28, 2002 issued by the Assistant Commissioner, Commercial Taxes, Biharsharif, contained in annexure 1 to the writ application, order dated November 22, 2002 issued by the

Assistant Commissioner, Commercial Taxes, Darbhanga contained in annexure 8 to the writ application and the order dated November 28, 2002 passed by the Assistant Commissioner, Commercial Taxes, Samastipur contained in annexure 10 to the writ application wherein the authorities have directed him to make payment of the amount of the sales tax mentioned in the orders on the ground that he has wrongly claimed discount above 20 per cent and has included discount above the same in the gross turnover.

3. The aforesaid orders/directions have been issued by the authorities solely on the direction issued by the Commissioner, Commercial Taxes, Government of Bihar, Patna. This Court in the case of Pro Agro Seeds Co. Ltd. v. State of Bihar (CWJC No. 9901 of 2002), disposed of on September 16, 2002 has already held that under the provisions of the Bihar Finance Act unless the assessing authority either disapproves the return or makes the assessment cannot demand more than what is due according to the return filed by the assessee. We have also held in the case of Nagendra Prasad v. Commissioner of Commercial Taxes (CWJC No. 10949 of 2002) disposed of on September 27, 2002 that the Commissioner of Commercial Taxes under the provisions of the Act and the Rules has not been authorised to issue any direction to the quasi-judicial authority. This apart, we have also held that the Commissioner of Commercial Taxes cannot issue any direction to the quasi-judicial authorities as that will amount to direct interference in their functioning as such.

4. In the present case, it appears that the aforesaid orders have been passed without either disapproving the return or without making the final assessment and the orders have been issued in pursuance of the order of the Commissioner of the Commercial Taxes which we have already quashed on the aforesaid ground.

5. In the result, the writ application is allowed and the orders as contained in annexures 1, 8 and 10 to the writ application are quashed. However, it will be open for the authorities to make final assessment and determine the liability of the petitioner in accordance with law. Any amount paid in excess in pursuance of the aforesaid orders contained in annexures 1, 8 and 10 to the writ application will be adjusted towards the future liability.