WEB COPY NOT OFFICIAL

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2325 of 2015

==

SHANDONG WEICHAI HUAFENG POWER (I) Pvt. Ltd., a private limited company incorporated under the Companies Act, 1956, having its registered office at Plot No.A/199, TTC Industrial Area, MIDC, Khairne, Navi Mumbai-400710 and its local office at 91-Saryar Villa, Montessori School Lane, Boring Road, Patna-1 (Bihar) through its Regional Service Manager Sushant Ranjan son of Pramod Ranjan Sinha, resident of Savitri Apartment, Budha Colony, P.S. Budha Colony and District-Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. The Commissioner of Commercial Taxes, Bihar, Patna, Vikas Bhawan, New Secretariat, Bailey Road, Patna.
3. The Joint Commissioner of Commercial Taxes (Appeals), Central Division, Patna, Pant Bhawan, Bailey Road, Patna-1.
4. The Commercial Taxes Officer, Patliputra Circle, Pant Bhawan, Bailey Road, Patna-800001.
5. The Branch Manager, Union Bank of India, Sakinara, Andheri (E), Mumbai-400072.
6. Reliance Infratel Limited, 15th Floor, Biscomaun Bhawan, Patna.

.... Respondents

==

Appearance :

For the Petitioner	:	Mr. R.K. Agrawal, Advocate with Messrs. A.K. Pandey, Satish Kumar & Shiva Kumar, Advocates
For the S t a t e	:	Mr. Vikas Kumar, A.C. to PAAG

==

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 05-02-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of two demand notices, both, dated 27.10.2014, issued under Section 47 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as `the VAT Act'), addressed to the Branch Manager, Union Bank of India, Mumbai and another to respondent-Reliance Infratel Limited, Patna, for deducting and making payment of amount of Rs.47,85,437/- and Rs.2,60,59,685/- for the period 2009-10 and 2010-11, respectively.

It is submitted by learned counsel for the petitioner that as a matter of fact, in terms of the calculation, as made by the petitioner, it would be entitled to refund of Rs.7,16,493.10 and Rs.41,92,477.16 for the said two periods, but just to deny the refund, the Assessing Officer rejected the claim regarding the Works Contract Tax (WCT) deducted at source as also denied the benefit of Input Tax Credit (ITC) to the petitioner resulting in the said unlawful demands together with interest and penalty for fraud committed in favour of the department. It is also submitted that with regard to the assessment made for the period 2009-10, the petitioner has already filed an appeal as against the original demand of Rs.1,27,60,948/-, out of which an amount of Rs.79,75,674/- has been paid and has also challenged the said assessment before the Joint Commissioner of Commercial Taxes (Appeals), Central Division, by filing an appeal being STPR-190/2013-14, but despite passage of nearly one year, the appeal has remained pending. In the meantime, demand notices under Section 47 of the VAT Act have been issued. Similarly, with respect to the demand for the period 2010-11, the petitioner has filed a revision before the Commissioner of Commercial Taxes, which is pending for the last three and a half months.

On a consideration of the facts and circumstances of the case, the writ application is disposed of with direction to the Joint Commissioner, Commercial Taxes (Appeals), Central Division and the Commissioner of Commercial Taxes, Bihar to consider and dispose of the appeal and the revision respectively, pending before them, within a period of two weeks from the date of receipt/production of a copy of this order. The petitioner shall co-operate in the hearing and disposal of the appeal and the revision.

Until such decision, no coercive steps shall be taken against the petitioner.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

PNM

U			