IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4188 of 2015

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Vodafone Essar South Ltd. (now known as Vodafone South Ltd.), a Company incorporated under the Companies Act having its office at 48, Okhla Industrial Area, Phase-II, P.O. + P.S. Okhla, New Delhi-110020 and its branch at Block A, Sai Corporate Park, Rukunpura, P.O. Rupaspur, P.S. Rupaspur, District Patna through its authorized signatory, Rajkumar Paul, S/o Late Manik Chand Paul, Resident of Block A, Sai Corporate park, Rukunpura, P.O. B.V. College, P.S. Rupaspur, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Commercial Taxes Officer, Patliputra Circle, Patna.

.... Respondent/s

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with

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2. Commercial Taxes Officer, Patliputra Circle, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy
Mr. Jayanta Ray Chaudhary
Mrs. Manju Jha

For the State : Mr. Sandeep Kumar (GA-8)
Mrs. Archana Sinha, AC to GA-8
Mr. Vivekanand Singh, AC to GA-8

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

3 27-03-2015 Heard learned counsel for the petitioner in both the cases and learned Government Advocate No.8 for the State.

The petitioner seeks quashing of the orders dated 9.1.2015 passed by the Commercial Taxes Officer, Patliputra Circle, Patna for the periods 2013-14 and first quarter of the period 2014-15 respectively as also the notice of demand dated 14.3.2015 under Section 47 of the Bihar VAT Act.

It is the stand of learned counsel for the petitioner that the petitioner had submitted before the Assessing Officer the Forms “C” and “F” that were in its possession and had prayed for extension of time for filing the remaining forms but the authorities of the State which had to issue the forms had not issued the same and the petitioner was in the process of obtaining the said forms, however, without giving any proper opportunity to the petitioner to produce the requisite forms which the petitioner was helpless to produce in the above circumstances due to inaction of the tax authorities of the other State, the assessing officer has penalized the petitioner by the impugned order.

Learned counsel also points out that on 8.1.2015 the respondent Commercial Tax Officer, Patna Circle, Patna did not record the prayer made for extension of time in the order sheet for producing the forms and fixed the matter for 30.1.2015 for hearing of the petitioner.

In support of the aforesaid stand learned counsel relies upon a decision of the Supreme Court in the case of Ambica Steels Ltd. Vs. State of U.P. and Ors.: (2009) 14 SCC 309.

On a consideration of the facts and circumstances of the case, both the writ applications are allowed. The impugned orders dated 9.1.2015 as also the notice of demand dated 14.3.2015 are quashed and the matter is remanded to the Assessing Officer to reconsider the case of the petitioner and pass a fresh order after giving opportunity to the petitioner to produce the necessary forms "C" or "F" and in case those forms are not available with the petitioner then consider the case on the basis of other evidence with regard to the transaction as may be produced by the petitioner as laid down by the Apex Court in Ambica Steels's case (supra).

The petitioner shall present himself before the Assessing Officer on 11th May, 2015 at 11.30 A.M. along with all the necessary forms and evidences and the Assessing Officer shall pass necessary orders in accordance with law thereafter.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Anjana Mishra, J)

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