IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4259 of 2015

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Chitwan Blenders & Bottlers Pvt. Ltd.

.... Petitioner/s

Versus

The State Of Bihar & Ors

.... Respondent/s

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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)

2 20-03-2015 Heard learned counsel for the petitioner and learned Principal Additional Advocate General for the State as also learned counsel for Bihar State Beverage Corporation Ltd.

The petitioner seeks quashing of the demand notice dated 27.2.2015 issued by the Deputy Commissioner (In charge), Commercial Taxes, Danapur Circle, Danapur under the provisions of Section 3 (7) of the Bihar Value Added Tax Act, 2005, by which the petitioner has been directed to deposit a sum of Rs.40 crores as advance tax for the month of March, 2015 by 25.03.2015.

Learned counsel for the petitioner submits that in the previous year also a huge demand of Rs.40 crores was raised and this Court by order dated 28.3.2014 had granted ad-interim order against coercive recovery of the said amount but before the order could be communicated, the respondent authorities under coercion recovered the amount under the provisions of the VAT Act.

Learned counsel for the petitioner relies upon the provisions of Section 3 (7) & (8) of the Act read with Rule 7 of the Bihar Value Added Tax Rules, 2005, which are quoted below:-

> " Section 3 (7) The tax for each year or any part thereof, may, with the previous approval of the Commissioner, be estimated and collected in advance, in the manner prescribed, during a year, in such instalments as may be fixed by the prescribed authority.
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> (8) For the purposes of sub-section (7), the prescribed authority may require the dealer to furnish an advance estimate of his taxable turnover for that year or any part thereof and may provisionally determine the amount of tax payable by the dealer in respect of the year or any part thereof and there upon the dealer shall pay the amount so determined by such date as may be fixed by such authority."
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> "Rule 7. Collection of Advance Tax- (1) Subject to the prior sanction of the Joint Commissioner of Commercial Taxes (Administration) of the concerned division, the advance tax under sub section (7) of section 3 shall ordinarily be for a period not exceeding three months of any year.
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> (2) Notwithstanding anything contained in sub rule (1), if the authority specified in rule 62 is satisfied that, in the case of any goods or class or description of goods or in the case of any dealer or any class of dealers, it is necessary in the interest of revenue so to do, he may, with the prior sanction of the Commissioner, require any dealer to pay advance tax for a period not exceeding twelve months in such instalments as may be deemed fit."

It is submitted by learned counsel for the petitioner that advance tax can be collected only as the estimated tax for a period during the year in question which would be during the financial year. It is further submitted that under sub-section (8) of Section 3, the prescribed authority is required to obtain from the dealer the advance estimate of his taxable turnover for that year or any part thereof and may provisionally determine the amount but no such notice to produce the provisional estimate was sent to the petitioner and without considering the tax liability of the petitioner, as is evident from the chart produced for the period 2013-14 and 2014-15 till the month of February,2015, unjustified for advance tax of Rs.40 crores has been demanded.

It is urged by learned counsel for the petitioner that if the figures for the relevant period of previous financial year are taken, the petitioner had paid tax of Rs.4.75 crores approximately in the month of February, 2014 and Rs.6.08 crores approximately was the tax liability till 25th March, 2014.

In the present financial year also, the figure of tax paid for the month of February, 2015 is only Rs. 6.78 crores approximately.

It is, thus, submitted by learned counsel for the petitioner that such a huge amount as advance tax is uncalled for.

Learned Principal Additional Advocate General on a consideration of the charts of sales tax amounts paid by the petitioner for the aforesaid two financial years is unable to defend the action of the respondents and fairly concedes that an amount of Rs. 7 crores as advance tax is reasonable which the respondents can justify in the facts and circumstances of the case.

In the aforesaid view of the matter, the writ application is disposed of with a direction that the liability of the petitioner to pay advance tax in the impugned notice dated 27.2.2015 shall be limited to Rs. 7 crores, which the petitioner must pay by the date mentioned in the notice. Any amount of advance tax paid in excess by the petitioner as compared to his actual liability shall be adjusted against the tax for the month of April onwards.

V.P.Sinha/-

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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