IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20978 of 2014

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Cadbury India Limited (now known as Mondelez India Foods Limited), a Company registered under the Companies Act, 1956 having its registered office at Unit 2001, 20th Floor, Tower 3 (Wing-C), Indiabulls Finance Centre Parel, Mumbai - 400013 having its branch office at Sabalpur, P.O. - Sabalpur, P.S. - Didarganj, District - Patna through its Assistant Manager (Legal), Asheesh Gupta Son of Shri Madan Lal Gupta, Resident of Flat No. 605, Gulmohar City (New new Collectorate), Gawaliar, P.O. - New High Court, P.S. - University Tahna, Gawalior - 474001

.... Petitioner

Versus

1. Commissioner Customs Central Excise and Service Tax having its office at Annexe Building, 3rd Floor, Central Revenue Building, Beerchand Patel Path, Patna
2. Assistant Commissioner (LCS), Raxaul, East Champaran

.... Respondents

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with

Civil Writ Jurisdiction Case No.20979 of 2014

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Cadbury India Limited (now known as Mondelez India Foods Limited), a Company registered under the Companies Act, 1956 having its registered office at Unit 2001, 20th Floor, Tower 3 (Wing-C) Indiabulls Finance Centre Parel, Mumbai - 400013 having its branch office at Sabalpur, P.O. - Sabalpur, P.S. - Didarganj, District - Patna through its Assistant Manager (Legal) Asheesh Gupta Son of Shri Madan Lal Gupta, Resident of Flat No. 605, Gulmohar City (New new Collectorate), Gawaliar, P.O. - New High Court, P.S. - University Tahna, Gawalior - 474001

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna
2. Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna
3. Commercial Taxes Officer, Patliputra Circle, Patna

.... Respondents

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Appearance :

(In CWJC No.20978 of 2014)
For the Petitioner/s : Mr. D.V.Pathy & Ms. Manju Jha, Advocates
For the Respondent/s : Mr. Nivedita Nirvikar, Sr.S.C.
(In CWJC No.20979 of 2014)
For the Petitioner/s : Mr. D.V.Pathy & Ms. Manju Jha, Advocates
For the Respondent/s : Mr. Vikas Kumar, AC to PAAG

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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)

7 08-04-2015 Heard learned counsel for the petitioner and learned counsels for the Customs Department and for the State of Bihar.

Both the writ applications arise out of assessment under the Bihar Value Added Tax Act, 2005 for the periods from 2010-11 to 2012-13.

In CWJC No. 20978 of 2014 the grievance of the petitioner is that since the bills of export and custom clearance certificate with respect to export sale of huge quantity of goods made to Nepal were lost on account of theft committed in the office of the petitioner for which FIR had also been lodged, they sought duplicate bills of export and custom clearance certificate from the office of the Assistant Commissioner (LCS), Raxaul, East Champaran, which not having been provided, as a result assessment orders have been passed against the petitioner imposing huge liability under the Bihar VAT Act and no exemption on account of export sale has been given due to non-production of the said documents. It is submitted that against the said order the petitioner has already filed an appeal, which is pending before the Joint Commissioner, Commercial Taxes (Appeals), where the petitioner has to file necessary evidence in order to get the relief which the petitioner is entitled to in view of the nature of the transactions. In the meantime, it is submitted that the Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna had issued a notice dated 26.11.2014 under Section 47 of the Bihar VAT Act to the Bank of the petitioner which necessitated the filing of the second writ petition.

Learned counsel for the State submits that in the counter affidavit filed it is clearly stated that the notice dated 26.11.2014 had been withdrawn by letter dated 15.12.2014 and therefore the writ petition has become infructuous.

In view of the aforesaid stand taken in the counter affidavit, CWJC No. 20979 of 2014 is dismissed as infructuous.

So far as the other writ petition is concerned, learned counsel for the Customs Department submits on the basis of the counter affidavit filed therein that under the Public Notice No. 02/2013 dated 15.3.2015 issued by the office of the Commissioner of Customs, Patna it is provided in paragraph-17 thereof that in case of lost documents duplicate printout of EDI Shipping Bill cannot be allowed to be generated if it is lost, since extra copy of

Shipping Bills are liable to be misused. However, a certificate can be issued by the Customs stating that "Let Export" order has been passed in the system to enable the goods to be accepted for export. It is submitted by learned counsel for the Customs Department that for the said reason the respondents are not willing to issue duplicate copy of the bills of export sought by the petitioner. At best a certificate as stated in paragraph-17 can be issued provided the necessary details are supplied by the petitioner.

Learned counsel for the petitioner submits that details of statement of export sale for the financial year 2010-11 till 2012-13 have already been annexed by the petitioner to the extent that the details are available with the petitioner which includes the bill number, bill date, name of the party, to whom export has been made, invoice amount and the date of dispatch, which should be sufficient for the respondent Customs Department to issue the certificate in question, so that he may produce the same before the Appellate Authority as the evidence of the nature of transactions.

On a consideration of the facts and circumstances of the case, CWJC No. 20978 of 2014 is disposed of with a direction that the petitioner shall file a fresh application before the Commissioner of Customs, Patna giving the details as enumerated in the annexure to the writ petition itself regarding the transactions in question, whereupon the Commissioner of Customs shall ensure that the certificates in terms of paragraph-17 are issued to the petitioner within a period of two months from the date of receipt/production of a copy of this order along with the application in question. Upon the said certificate being issued the Appellate Authority shall consider the same along with the other evidences to be produced by the petitioner as evidence of the nature of transactions before passing the order under the provisions of the Bihar VAT Act.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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