IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12073 of 2012

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S.P.M.L. Infra Ltd. (Formerly Known as Subhas Project and Marketing Ltd.), a Company Incorporated under the Companies Act having its Office at Kailash Enclave, House No. 7a, Near Sangeeta Apartment, Shivpuri P.O.+P.S.- Shastrinagar, District- Patna, through its General Manager (Projects), N. Sankaranarayanan, S/O Hariharan Natarajan, R/O 202, Sibu Sharnam Apartment, Buddha Colony, Paotna, Bihar, P.O.+P.S.-Buddha Colony, Patna

.... Petitioner/s

Versus

1. The State Of Bihar through the Commissioner Of Commercial Taxes having its Office at Vikas Bhawan, Bailey Road, Patna
2. Joint Commissioner Of Commercial Taxes, Central Division, Patna
3. Commercial Taxes Officer, Special Circle, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy

For the State : 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)

5 26-02-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 18.4.2012 passed by the respondent no.2, Joint Commissioner of Commercial Taxes, Central Division, Patna by which the appeal filed by the petitioner has been dismissed on the point of admission on the ground that no application for condonation of delay has been filed nor any evidence has been produced regarding deposit of 20% of the disputed amount/admitted amount of tax.

Learned Counsel for the petitioner submits that so far as the question of filing of condonation application is concerned, learned counsel for the petitioner before the appellate authority noticing that the condonation application was not there on 17.4.2012, had immediately taken steps to file an application for condonation of delay after obtaining stamp which was franked on 18.4.2012 and had immediately thereafter rushed to file the same but was informed that the order of dismissal has been passed that day itself on 18.4.2012.

It is further submitted that so far as the deposit of 20% disputed amount/ admitted amount of tax is concerned, the petitioner on a proper consideration of the matter would not be liable to pay any tax at all and, as a matter of fact, as against a demand of Rs. 5,08,769.28 tax to the extent of Rs. 1,45,86,626/- had already been deducted at source for which the necessary Form C-II has also been annexed by way of supplementary affidavit.

On a consideration of the facts and circumstances of the case, the writ application is allowed. The order dated 18.4.2012 passed by the Joint Commissioner of Commercial Taxes, Central Division, Patna is quashed and the matter is remanded to the appellate authority to consider the appeal in accordance with law.

The petitioner shall file a copy of the application for condonation of delay, the original of which, has been filed before this Court, on affidavit before the appellate authority for the purpose of record.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Anjana Mishra, J)

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