IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1744 of 2015

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1. H.C.L.infosystems Ltd. a limited company registered under the Companies Act, 1956 having its branch office at Jyoti Kandan Boring Patliputra Road, Patna P.O. + P.S. Sri Krishnapuri, District - Patna through its authorized Signatory Shobha Kant Son of Shri Rajendra Prasad Singh, Resident of Yashoda Bhawan Naya Tola, Saristabad Road Gardanibagh, P.O. + P.S. - Gardanibag, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes having its office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes (Appeals), Central Division having its office at Pant Bhawan, Patna.
3. Commercial Taxes Officer, Patliputra Circle, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy
Mrs. Manjhu Jha
For the Respondent/s : Mr.Vikash Kumar, A.C. to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

3 04-08-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 19.1.2015 passed by the Joint Commissioner of Commercial Taxes (Appeals), Central Division, Patna, by which he has directed the petitioner to deposit an amount of 40% of the disputed amount in addition to 20 % statutory amount already deposited by the petitioner, which demand relates not only to the tax due but also three times penalty imposed upon the petitioner.

The case of the petitioner, in short, is that the allegation of suppression of sales with respect to its dealer and claim of excess availment of input tax credit regarding purchase made from Nokia India Pvt. Ltd. has been made. The petitioner had filed an application before the Assessing Officer under Section 12 of the Act to compel the Nokia India Private Limited as also the dealers of the petitioner, specially Vinayak Enterprises to produce the books of accounts so that the issue as to whether it was the petitioner who had suppressed the sale or it was the purchasing dealers from the petitioner, particularly Vinayak Enterprises who had claimed excess input tax credit may be adjudicated but without doing the same, the assessment order was passed which has been impugned by the petitioner before the Joint Commissioner (Appeals) but without considering the said aspect of the matter the Joint Commissioner has passed the order to deposit the further 40% disputed amount.

It is pointed out by learned counsel for the State that the petitioner had made a request that the remaining payment of disputed amount may be stayed on deposit of 20% of the disputed amount.

In the facts and circumstances of the case, in our view, it would be just and fair to direct the petitioner to further deposit 20% of the disputed amount and stay the remaining payment of disputed amount till the disposal of the appeal.

The writ application is, accordingly, allowed and the impugned order dated 19.1.2015 of the Joint Commissioner, Commercial Taxes (Appeals) Central Division, Patna is modified to the extent that on payment of 20% of the disputed amount within a period of four weeks from today there shall be stay of payment of the remaining disputed amount till the disposal of the appeal.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

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