IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.903 of 2015

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Gujarat Telelink Private Limited, registered under the Companies Act, 1956, having registered office at 1st Floor, Shanti Niketan, House No- 1090, Near Times of India, Frazer Road, P.S. Gandhi Maidan, District- Patna through authorised signatory, Subhash Chandra Jha S/O Sri Tej Narayan Jha, aged about 31 Years resident of Mohalla- Anand Bihar Colony, East Gola Road, Danapur, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna
2. The Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna
3. The Commercial Taxes Officer, Patliputra Circle, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. S.D.Sanjay, Sr.Advocate with Mr. Prabhash Ranjan Thakur, Advocate

For the Respondent/s : Mr. Lalit Kishore, PAAG with 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 02-04-2015 Heard learned counsel for the petitioner and learned Principal Additional Advocate General for the State.

The petitioner has approached this Court for quashing the order dated 19.11.2014 passed by the Commercial Taxes Officer, Patliputra Circle, Patna by which he has imposed tax and penalty amounting to Rs.4,12,42,275/- upon the petitioner under the Bihar Entertainment Tax Act.

From the submissions of learned counsels for the parties it is evident that a number of disputed facts have been raised in the present matter which may not be convenient for us to decide in the writ jurisdiction specially keeping in view the fact that the petitioner has statutory remedy of appeal against the said order.

One aspect of the matter so far as the final levy of tax is concerned has been brought to the notice of the Court that the Assessing Officer has relied upon the provisions of Section 3AA of the Act for holding the petitioner liable to payment of entertainment tax but while calculating the tax thereupon he has applied the provisions of Section 3AAA read with Rule 19A(2) of the Entertainment Tax Rules. It is submitted by learned counsel for the petitioner that the application of the wrong provision has led to doubling of the tax and penalty as under the provisions of Section 3AA, read with Rule 19A(1) of the Rules the entertainment tax leviable comes to Rs.15/- per connection, whereas under Section 3AAA read with Rule 19A(2) the same is fixed at 15% of the gross collection which in the present order has been taken at an estimate of Rs.200/- per connection which effectively comes to Rs.30/- per connection.

Although there appears to be sufficient force in the above submission of learned counsel for the petitioner but in view of the fact that we are not entertaining this writ application on the ground of availability of alternative statutory remedy, we express no final view on the said point and leave the said matter to be considered by the Appellate Authority.

The writ application is, accordingly, disposed of with a liberty to the petitioner to avail of its statutory remedy of appeal in the matter. In case any such appeal is filed along with a stay petition and an application for condoning the delay in filing the same by the petitioner within a period of three weeks from today, the same shall be considered by the Appellate Authority keeping in view the fact that the petitioner has been pursuing its remedies before us.

Until the decision on the stay petition, if filed within the aforesaid period by the petitioner, no coercive action shall be taken against it.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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