IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21605 of 2014

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M/s Juveline Engineers Pvt. Ltd., a company incorporated under the provisions of Companies Act, 1956 having its Registered Office at Village and Post Dhbouli, P.S. Bidupur, District Vaishali through one of its Director, Nand Kishore Nandan son of Shri Kumar Chandra Singh Resident of at Post Dhobouli, P.S. Bidupur Bazar, District-Vaishali

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary cum-Commissioner of Commercial Taxes, Bihar, Patna
2. The Commissioner of Commercial Taxes, Bihar, Patna
3. The Secretary, Commercial Taxes Tribunal, Bihar, Patna
4. The Assistant Commissioner of Commercial Taxes, Hajipur Circle, Hajipur at Vaishali

.... Respondents

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with

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.... Respondents

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Appearance :

For the Petitioner/s : Mr. S.D.Sanjay, Sr. Advocate
Mr. Alok Kumar Agrawal, Advocate

For the State : Mr. Vikas Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 09-01-2015 Heard learned counsel for the petitioner and

learned counsel for the State.

The only grievance of the petitioner in both the writ applications is against the direction of the Commercial Taxes Tribunal, Bihar, Patna by its orders dated 7.7.2014 to deposit 40% of the amount of penalty as a condition for staying the realization of balance amount of penalty.

It is submitted by learned counsel for the petitioner that although the company is a private limited company but its Principal Shareholder- Director is semi-literate person not having proper understanding of tax matters. It is stated that the petitioner is undertaking certain works contract with the railways from which taxes at the rate of 4% is being deducted at source from the gross bill and the work being mainly in the nature of contract work, as a matter of fact, even the said tax deduction on a proper assessment would work out higher than the tax liability of the petitioner.

In view of the lack of proper understanding of the petitioner, the petitioner had filed NIL return before the authorities however, indicating the fact therein that it was a works contract with the railways. It is thus submitted that it is not a case of tax evasion by the petitioner rather a case of not filing return in the proper manner and now the petitioner has relevant Form C-1 with it and it can be easily produced before the Assessing Officer if the matter is remanded. The matter is ultimately likely to result in no liability and may be even refund to the petitioner.

In view of the aforesaid stand, learned counsel for the petitioner submits that the direction to deposit 40% amount of penalty would be onerous and too harsh upon the petitioner and would amount to closure of the business of the petitioner.

Learned counsel for the State opposes the stand of the petitioner stating that the writ applications themselves in such circumstances are not maintainable as there is a provision for appeal under Section 79 of the Bihar VAT Act before this Court itself against every order of the Tribunal. In support of the same learned counsel for the State relies upon an order dated 8.7.2013 passed in CWJC No. 20873/2012 (U.B.Distilleries Limited Vs. State of Bihar & Ors.) by a Division Bench of this Court observing that in view of the statutory remedy of reference available to the petitioner, a petition under Article 226 of the Constitution is not maintainable.

Learned counsel for the petitioner, in response, relies upon a decision of an earlier Division Bench of this Court in the case of M/s. Indian Oil Corporation Ltd. Vs. The State of Bihar & Ors.: 2006(3) PLJR 146 in which the specific plea of maintainability taken by the Advocate General has been negatived by this Court in the following words in paras 22 to 26 of the said judgment which are quoted below:-

> “22. Learned Advocate General, appearing for the respondent State has strongly raised the preliminary objection against the maintainability of the petition, placing reliance on the provisions of reference provided under Section 48 of the Bihar Finance Act, 1981.
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> 23. We have considered the provisions of Section 48 of the Bihar Finance Act, 1981. It is true that it provides a remedy for making a reference to the High Court after passing of the order by the Tribunal. In these context, let it be mentioned that ordinarily in case of alternative and efficacious remedy being available to the party, by prudence, the Court may not in certain cases, directly prefer to interfere in writ jurisdiction. Nonetheless, let it be also stated that availability or existence of alternative and efficacious remedy, “ipso facto” does not in any way constitute a bar or ban on the constitutional writ jurisdiction of the High Court under Article 226 of the Constitution.
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> 24. Firstly, despite availability of alternative remedy, when the Court finds that the impugned order recorded by one authority is prima facie in excess, or for want of jurisdiction, the Court may interfere and entertain the writ petition. Even in

case of infraction of violation of any fundamental rights, the plea of alternative remedy cannot be pressed into service against the exercise of the writ jurisdiction by the Court under Article 226 of the Constitution. There are also contingencies that if the impugned order suffers from non-observation of the principles of natural justice, the Court can interfere even in case where an alternative remedy is available.

25. The proposition of law on this count has been extensively explored and well propounded in catena of judicial pronouncements. However, the following decisions may be referred which, clearly, reinforce the opinion which we are taking in this matter.

26. The Hon'ble Apex Court in the following four decisions have lucidly explored this proposition:-

(i) State of U.P. Vs. Mohammad Nooh, AIR 1958 SC 86. (Paragraphs 10 and 11 of the report contain the clear observations).

(ii) Ram and Shyam Company Vs. State of Haryana and Ors., (1985) 3 SCC 267. (The relevant observations are made in paragraph 9 of the report).

(iii) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., AIR 1999 SC 22 (material observations in this regard are in paragraphs 20 and 21 of the report).

(iv) State of Himachal Pradesh Vs. Gujrat Ambuj

Cement, (2005) 6 SCC 499. (Paragraph 23 is relevant)."

In view of the authoritative pronouncement by an earlier Division Bench of this Court which is based upon several decisions of the Apex Court, it is evident that the remedy of invoking jurisdiction of this Court under Article 226 of the Constitution is essentially one of discretion to be exercised considering the facts and circumstances of the case in question.

In the facts and circumstances of the case, we are of the view that a direction to deposit 40% of the amount of penalty as a condition for staying the realization of balance amount of penalty would not be in the interest of justice.

Both the writ applications are, accordingly, allowed and the orders dated 7.7.2014 passed by the Commercial Tax Tribunal are modified to the extent that the direction to deposit shall be 20% of the amount of penalty as a condition for staying the realization of the balance amount of penalty.

(Ramesh Kumar Datta, J)

(Vikash Jain, J)

S.Pandey/-

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