IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.515 of 2015

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Areva T & D India Ltd. (now known as Alstom T & D India Ltd.), a Company incorporated under the Companies Act, 1956 having its registered office at A/18 Ist Floor Okhla Industrial Area, Phase-II, New Delhi-110020 and Branch Office at Sai Kripa Mandal, Boring Road, P.O. Shrikrishnapuri, P.S. Shrikrishnapuri, District Patna through its Manager, Arun Kumar Mishra, S/o Shri Pratap Narayan Mishra, Resident of House No. 36, Montessori Gali, East Boring Road, Patna-800001, P.O. Shrikrishnapuri, P.S. Shrikrishnapuri, District Patna.

.... 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. Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna.
3. Asstt. Commissioner of Commercial Taxes, Patliputra Circle, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. D.V. Pathy with M/S Pankaj Kumar, P.K.Mishra & Manju Jha, Advocates

For the Respondent/s : Mr. Vikash Kumar, AC 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)

4 17-09-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the notice dated 20.12.2014 issued by the respondent No.3 under Section 47 of the Bihar Value Added Tax Act, 2005 by which the Bank Account of the petitioner has been attached and an amount of Rs.1,19,95,608.75 relating to the period 2008-09 has been recovered : out of the same Rs.23,51,023/- is under the VAT assessment and Rs.96,44,585.75 on account of VAT/CST assessment.

Two orders of assessments were passed both dated 11.3.2014 for the aforesaid amounts by respondent No.3, the Assistant Commissioner, Commercial Taxes, Patliputra Circle, Patna. Against the same the petitioner filed two revision applications being Revision Case Nos. C.C.(S)-43 and 44/2014-15 before the Commissioner, Commercial Taxes, Bihar. While the matter was pending before the Commissioner a notice of attachment under Section 47 of the Act was issued on 29.9.2014. The petitioner rushed to this Court by filing CWJC No. 17516 of 2014 which was disposed of by order dated 15.10.2014 with the direction that the attachment order as contained in Annexure-4 series shall remain stayed for a period of four weeks within which the Commissioner, Commercial Taxes was directed to dispose of the revision application. The revision application was ultimately disposed of by the Commissioner, Commercial Taxes on 16.12.2014 dismissing the same, against which the petitioner has filed appeals before the Tribunal on 24.12.2014. However, in the meantime on 20.12.2014 a fresh attachment order was issued to the Branch Manager, CITI Bank, Chennai for paying a sum of Rs.1,19,95,608.75 which was ultimately paid on 30.12.2014.

Learned counsel for the petitioner submits that the case of the petitioner is squarely covered by a decision of this Court by order dated 28.7.2015 in CWJC No. 10242 of 2015 (Heinz India Private Limited vs. The State of Bihar & Ors.) and its analogous cases in which this Court had accepted the contention of learned counsel for the petitioner that the petitioner had statutory remedy of appeal available before the Tribunal upon deposit of 20% of the amount in dispute, which amount could be waived or reduced by the Tribunal for reasons to be recorded by it under Section 73 of the Act and thus the attachment and recovery was made post haste by the respondents. This Court had referred to a Division Bench decision of this Court in the case of CWJC No. 22705 of 2012 : Larsen & Toubro Limited vs. The State of Bihar and another and its analogous cases and the post haste recovery made by the respondent Tax authorities had been quashed and direction was given to refund substantial part of the amount of recovery by way of attachment.

In the present matter it is submitted by learned counsel for the petitioner that the only reason for passing of the attachment order was on account of non-production of the entire Forms C and Forms E-1 as also vouchers related to labour expenses, documents in relation to which had been produced before the Commissioner in revision petition but not looked into by him and thus the petitioner has a strong case in the matter.

Learned counsel for the State is unable to satisfy us as to how the decision of this Court by order dated 28.7.2015 in CWJC No. 10242 of 2015 does not apply in the present matter except to state that the attachment order was reissued before the filing of appeal by the petitioner. The same is no answer to the ratio of the said decision.

The writ application is, accordingly, allowed and the respondents are directed to refund an amount of Rs.94 lacs to the petitioner after retaining an amount of Rs.25,95,608.75 within a period of 15 days from the date of receipt/production of a copy of this order.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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