IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15624 of 2015

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M/s Bharat Petroleum Corporation Limited, a company incorporated under the provisions of Companies Act, 1956 having one of its Branch Offices at 4th Floor, Exhibition Road, P.S. Gandhi Maidan, District Patna through its Sr. Manager, Finance, Shared Services, Eastern Region Sanjay Prasad Shaw, S/o Shri Bhuwaneshwar Prasad Shaw, Resident of 46, G.T. Road, P.O. Rishra, P.S. Rishra, District-Hooghly(West Bengal).

.... Petitioner/s

Versus

1.The State of Bihar through the Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Patna.
2. The Secretary, Commercial Taxes Tribunal, Bihar, Patna.
3. The Joint Commissioner of Commercial Taxes(Appeals), Central Division, Patna.
4. The Deputy Commissioner of Commercial Taxes in-charge, Special Circle, Patna.
5. The Assistant Commissioner of Commercial Taxes, Special Circle, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 15625 of 2015

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M/s Bharat Petroleum Corporation Limited, a company incorporated under the provisions of Companies Act, 1956 having one of its Branch Offices at 4th Floor, Exhibition Road, P.S. Gandhi Maidan, District Patna through its Sr. Manager, Finance, Shared Services, Eastern Region Sanjay Prasad Shaw, S/o Shri Bhuwaneshwar Prasad Shaw, Resident of 46, G.T. Road, P.O. Rishra, P.S. Rishra, District-Hooghly(West Bengal).

.... Petitioner/s

Versus

1.The State of Bihar through the Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Patna.
2. The Secretary, Commercial Taxes Tribunal, Bihar, Patna.
3. The Joint Commissioner of Commercial Taxes(Appeals), Central Division, Patna.
4. The Deputy Commissioner of Commercial Taxes in-charge, Special Circle, Patna.
5. The Assistant Commissioner of Commercial Taxes, Special Circle, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 15627 of 2015

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M/s Bharat Petroleum Corporation Limited, a company incorporated under the provisions of Companies Act, 1956 having one of its Branch Offices at 4th Floor, Exhibition Road, P.S. Gandhi Maidan, District Patna through its Sr. Manager, Finance, Shared Services, Eastern Region Sanjay Prasad Shaw, S/o Shri

Bhuwaneshwar Prasad Shaw, Resident of 46, G.T. Road, P.O. Rishra, P.S. Rishra, District-Hooghly(West Bengal).

.... Petitioner/s

Versus

1.The State of Bihar through the Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Patna.
2. The Secretary, Commercial Taxes Tribunal, Bihar, Patna.
3. The Joint Commissioner of Commercial Taxes(Appeals), Central Division, Patna.
4. The Deputy Commissioner of Commercial Taxes in-charge, Special Circle, Patna.
5. The Assistant Commissioner of Commercial Taxes, Special Circle, Patna.

.... Respondent/s

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Appearance :
(In CWJC No. 15624 of 2015)
For the Petitioner/s : Mr. S. D. Sanjay,Sr.Adv.
For the Respondent/s : Mr. Vikash Kumar,Adv.
(In CWJC No. 15625 of 2015)
For the Petitioner/s : Mr. S.D. Sanjay,Sr.Adv.
For the Respondent/s : Mr. Vikash Kumar
(In CWJC No. 15627 of 2015)
For the Petitioner/s : Mr. S.D. Sanjay,Sr.Adv.
For the Respondent/s : Mr. Vikash Kumar,Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 28-09-2015

These three writ petitions were specially mentioned because of urgency of the matter. The writ petitioner is a Government of India Undertaking. There were assessments to Value Added Tax and Entry Tax under the State Statutes. The petitioner being aggrieved filed statutory appeal before the Joint Commissioner of Commercial Taxes(Appeals), Central Division, Patna, which is pending. The petitioner made application for stay. The Joint Commissioner of Commercial Taxes(Appeals) granted conditional stay i.e., upon payment of forty percent of the demand, the balance would remain stayed. Before the petitioner could take remedial action against the orders of the Joint Commissioner of Commercial Taxes(Appeals) by way of moving the Commercial Taxes Tribunal, against the unjust demands, attachment orders have been issued by the Deputy Commissioner of Commercial Taxes, Patna Special Circle, attaching the petitioner's Bank Accounts to realize the entire dues.

2.Learned counsel for the State submits that if the petitioner deposits the amount, as per the order of the Joint Commissioner of Commercial Taxes(Appeals), certainly there would be no execution of the attachment.

3.On the other hand, Sri S.D. Sanjay, learned senior counsel appearing for the petitioner submits that as the demand, per se, being illegal and not maintainable, by this coercive process of attachment, denying them an opportunity even to move the Tribunal, the illegal demands cannot be enforced.

4.In our view, both the learned counsels are correct in their manner. Firstly, there being a conditional stay by the Joint Commissioner of Commercial Taxes(Appeals), the petitioner was expected to pay the same, but then the petitioner has remedy, as in law provided, of moving the Commercial Taxes Tribunal. This remedy cannot be taken away by attachment for realization of the whole amount due, in the meantime.

5.This Court has many a times deprecated the manner in which the State proceeds to attach Bank Accounts for realization of the dues. It is not that the Department has no power to do so; but the manner in which the power is exercised is not correct. Attachment for realization of tax is a matter of last resort, and not as a first line of action. We must also keep in mind that we are dealing with the Public Sector Undertaking, not fly by night operators.

6.Learned counsel for the State draws attention of this Court that it is statutorily provided that for preferring appeal twenty percent tax in demand has to be paid. Learned counsel for the petitioner states that the same has been paid. He then points out that the petitioner further agreed to pay twenty percent, as is apparent from the appellate order. Learned counsel for the petitioner does not dispute this. However, he points out that if the appellate authority had granted stay, even partly, the Deputy Commissioner was bound by the order of the appellate authority, and the demand, if any, could be raised only for the balance, and for the rest amount of dues.

7. In our view, as the forum of Tribunal is still available to the petitioner, the petitioner would be well-advised to avail of the said remedy. But ,in the meantime, the petitioner having already deposited twenty percent statutory amount in preferring appeal and

having already offered to deposit twenty percent more, on deposit of this additional twenty percent of demand in respect of VAT demands, subject to orders of the Tribunal that may be passed, the attachment orders of the Deputy Commissioner shall remain in abeyance. It is expected that upon the Tribunal being moved, the Tribunal would pass orders with regard to stay within a period of three months.

8.So far as the case in relation to Entry Tax is concerned, the Joint Commissioner of Commercial Taxes(Appeals) has passed no order of stay or with regard to stay. Learned counsel for the petitioner submits that the Entry Tax is to be set off against the liability to pay VAT. In other words, the Entry Tax liability, which the dealer incurs in course of importing goods in the State is to be adjusted against the liability to pay VAT on the sale of those products in the State. He submits that there is no dispute that the entire VAT liability on sale has been discharged by the petitioner. That being so, there being no adjustment of Entry Tax claim, there could be no liability for demand of Entry Tax, because when the Entry Tax is paid, then from the VAT paid, the petitioner would be entitled to refund. It would effectively be making the petitioner paying Entry Tax and entitling the petitioner to an equal amount of refund on account of VAT. The net result would be- no demand,yet ignoring this the Deputy Commissioner has issued certificates for attachment.

9.Be that as it may, as for filing the appeal the petitioner has paid more than twenty percent of the tax in demand and in dispute, and it has the right to approach the Tribunal, it would be just and proper that till the matter is adjudicated by the Tribunal, which should be done within three months of filing of proper application before it, the attachment order would be kept in abeyance. The Tribunal would come to a decision on the said aspect of the matter after hearing both the parties on merits. The question of limitation would not be taken as an impediment in maintaining the application before the Tribunal.

10.With these observations and directions, the three writ petitions are disposed of.

(Navaniti Prasad Singh, J)

B.K.Roy/-

(Nilu Agrawal, J)

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