IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4185 of 2015

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Gammon India Limited, a company incorporated under the Companies Act 1956 having its registered office at Veer Sawarkar Marg, Prabha Devi, P.S. Dadar, Mumbai - 400025 and Branch Office at Sher Ghati, P.O. and P.S. Gaya, Bihar through its Senior Manager (Indirect Taxation), Kamal B. Purohit, Son of Shri Banwari Lal Purohit, resident of B-3/15, EMCECE Cooperative Housing Society, Sundar Nagar, S.V. Road, P.O. and P.S. Malad (West), Mumbai - 400064.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.
2. Commercial Taxes Tribunal through its Secretary having its office at Kautilya Bhawan, Anta Ghat, Bankipore, Patna.
3. Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.4184 of 2015

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Gammon India Limited, a company incorporated under the Companies Act 1956 having its registered office at Veer Sawarkar Marg, Prabha Devi, P.S. Dadar, Mumbai - 400025 and Branch Office at Sher Ghati, P.O. and P.S. Gaya, Bihar through its Senior Manager (Indirect Taxation), Kamal B. Purohit, Son of Shri Banwari Lal Purohit, resident of B-3/15, EMCECE Cooperative Housing Society, Sundar Nagar, S.B. Road, P.O. and P.S. Malad (West), Mumbai - 400064.

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1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna.
2. Commercial Taxes Tribunal through its Secretary having its office at Kautilya Bhawan, Anta Ghat, Patna.
3. Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna.

.... Respondent/s

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Appearance :

(In CWJC No.4185 of 2015)
For the Petitioner/s : Mr. D.V.Pathy, Advocate.
For the Respondent/s : Mr. Vikas Kumar, A.C. to PAAG
(In CWJC No.4184 of 2015)
For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Vikas Kumar, A.C. 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)

2 19-03-2015 Heard learned counsel for the petitioner of both the cases and learned counsel for the State.

The petitioner has come to this Court seeking two directions; firstly, for a direction to Commercial Taxes Tribunal to dispose of Appeal Nos.PT 132 of 2014 and PT 133 of 2014 for the periods 2008-09 and 2009-10, respectively, and, secondly, to quash the notice dated 14.3.2015, issued by the Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna, by which the petitioner has been directed to pay amount of Rs.17,72,53,899/- for the period 2008-09 and Rs.19,53,64,808/- for the period 2009-10 by 17.3.2015, failing which action under Section 47 of the Bihar Value Added Tax Act, 2005 shall be taken for recovery of the aforesaid amounts.

It is submitted by learned counsel for the petitioner that the appeals were filed by the petitioner on 29.5.2014 along with petitions for stay of the demand notices, but till date neither the stay petitions nor the appeals have been disposed of by the Tribunal and, on the other hand, the respondent-Commercial Taxes Department has proceeded for recovery of the amount dues.

It is further submitted by learned counsel for the petitioner that the demand of tax for both the years after disallowing the claim of certain expenses relating to labour and other incidental expenses cannot lead to imposition of penalty, as has been held by the Apex Court in the case of ***CIT v. Reliance Petroproducts Pvt. Ltd.: [2010] 322 ITR 158(SC).***

Learned counsel for the State, on the other hand, submits that the disallowance has been made after taking into account certain decisions of the Supreme Court.

Be that as it may, we are of the view that once such huge demands are made by way of penalty and the appellant-petitioner has filed appeals along with applications for stay, which appeal the Tribunal might not be in a position to dispose of immediately, then it would have been appropriate for the Tribunal to have taken up the petitions for stay and dispose of the same after hearing the parties.

In the aforesaid view of the matter, both the writ applications are disposed of with a direction to the Tribunal to consider and dispose of the stay petitions filed by the petitioner in the aforesaid two appeals within a period of four weeks from the date of receipt/production of a copy of this order or, in the alternative, within the same period the Tribunal may dispose of the main appeal.

Until disposal of the stay petitions or, alternatively, the appeal itself, as directed by us above, the notice dated 14.3.2015 shall remain stayed.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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