IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1013 of 2015

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Larsen & Toubro Limited, a company incorporated under the Companies Act, 1956 having its registered office at Ballard Estate, P.S. Mata Ramabai Ambedkar Marg Mumbai - 400001 and Branch Office at Baleshwar Vihar Apartment, West Boring Canal Road, P.O. G.P.O. , P.S. Budha Colony, District Patna through its Manager - Indirect Taxes and authorized signatory Manab Basak son of Santosh Basak, resident of 123, P.N. Mukherjee Road, P.O. Sukchar P.S. Khardah Kolkata - 700115.

.... Petitioner/s

Versus

1. Commercial Taxes Tribunal, through its Secretary having its office at Anta Ghat, Patna.
2. Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.
3. Asst. Commissioner of Commercial Taxes, Special Circle, Patna.
4. Commercial Taxes Officer, Special Circle, Patna.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. D.V.Pathy
For the Respondent/s : Mr. Vikash Kumar, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 07-07-2015

Heard learned counsel for the petitioner and learned counsel for the State.

The grievance of the petitioner is with regard to the order dated 19.6.2014 of the Commercial Taxes Tribunal by which it has directed the petitioner to deposit 40% of the disputed demand for each of the periods holding that with regard to the period 2005-06 under VAT/Audit only 11.31% of the demand has been paid whereas there has been no payment for the years 2006-07 and 2007-08 with regard to the entry tax.

Learned counsel for the petitioner submits that as against 12 assessments made for the periods 2005-06 till 2007-08 under different heads which itself according to him is illegal, the total demand raised is to the tune of Rs. 60,91,51,639/- as against which the respondent department realized a sum of Rs. 45 crores through attachment which by the direction of this Court by order dated 28.1.2013 passed in CWJC No. 22705 of 2012 was modified and the department was directed to refund the amount of Rs. 20 crores which has been done. It is submitted that so far as the remaining 25 crores with the department is concerned, the same is more than 40% of the entire demand and so far as the payment shown through attachment for the specific period is concerned, the assessment has been made by the Officer of the Department and thus the order of the Tribunal to ensure payment of 40% amount of the disputed demand for each of the periods suffers from lack of application of mind.

Learned counsel for the State is unable to show how the petitioner can be held responsible for the appropriation of the realized amount made by the department. If no payment is shown for a particular assessment of a particular year and smaller payment is shown with respect to the same, it cannot be held to be on account of any default of the petitioner. The petitioner having paid 41.04% of the demand, we are of the view that the remaining demands ought to have been stayed by the Tribunal on the reasoning that 40% was paid and since the appropriation has been made by the Department's Officer and not the petitioner.

The order dated 19.6.2014 is, accordingly, modified to the extent that the amount already recovered from the petitioner shall be treated as sufficient deposit for the purpose of hearing the appeal and the remaining amounts demanded for the different periods shall remain stayed until the appeal is decided.

The writ application is, accordingly, allowed with the aforesaid direction.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Anjana Mishra, J)

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