IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11504 of 2015

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Lotte India Corporation Ltd., a company incorporated under the Companies Act, 1956 having its registered office at 4/169, Rajiv Gandhi Salai (OMR), Kundan Chavdi, Bus Stop, P.O.+ P.S. Perugudi, Chennai-600096 and Branch Office at Anishabad, P.O. Anishabad, P.S. Gardanibagh, District- Patna through its authorized signatory, Mukund Kmar, son of Late Hari Chandra Prasad Sinha, F/123, P.C. Colony, Kankarbagh, P.O. Kankarbagh, P.S. Kankarbagh, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna
2. Controller and Auditor General of Accounts, Bihar having its office at Beer Chand Patel Path, Patna
3. Dy. Commissioner of Commercial Taxes, Sough Circle, Patna
4. Asstt. Commissioner of Commercial Taxes, South Circle, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy
Mr. P.K.Mishra
Mrs. Manju Jha

For the Respondent/s : Mr. Raj Nandan Prasad-SC9

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE AMARESH KUMAR LAL

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 31-07-2015 Considering the fact that the petitioner has not challenged the original order of assessment passed on 14.10.2014 until issuance of a notice under Section 47 of the Bihar VAT Act on 20.7.2015 for which it is stated by learned counsel for the petitioner that the application for certified copy of the order was filed on 25.5.2015 which was made available on 23.7.2015 and further considering that even the application was made after substantial delay, we are not inclined to entertain

the writ application.

Learned counsel for the petitioner submits that the petitioner has filed a revision application on 29.7.2015 before the Commissioner of Commercial Taxes but the proper statutory remedy should have been in appeal as various issues of fact and law arise and the order, according to learned counsel, is grossly illegal and without any consideration of the principles of accounting.

In the aforesaid circumstances, learned counsel for the petitioner seeks permission to withdraw the writ application as also undertakes to withdraw the revision application pending before the Commissioner if liberty is granted to him to file an appeal before the competent authority along with an application for condonation of delay as also an application for stay which the petitioner undertakes to file within a week from today.

The writ application is, accordingly, dismissed as withdrawn and subject to the petitioner also filing an application for withdrawal of the revision application before the Commissioner, Commercial Taxes, liberty is granted to the petitioner to file an appeal within a period of one week from today along with an application for condonation of delay as also an application for stay of the impugned demand and notices.

In case any such appeal is filed as permitted, the appellate authority shall consider the same in accordance with law and within a week of the filing of the appeal consider and dispose of the stay application filed by the petitioner.

Until the decision on the stay application by the appellate authority, no coercive action shall be taken against the petitioner.

It is made clear that it shall not be open to the petitioner to challenge any order passed by the appellate authority on the stay application before this Court in a writ petition.

On an application being filed by the petitioner, the Commissioner shall return the original copy of the certified copy of the impugned order to enable the petitioner to file the appeal.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Amaresh Kumar Lal, J)

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