IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16740 of 2015

==

V. Guard Industries Limited, a Company incorporated under the Companies Act, 1956 through its authorized having its registered office at 49/962, Vennala High School Road, Vennala, Kochi – 682028, through its authorized representative Devjeet Kumar, son of Sri Vimal Singh, resident of Moh-Janta Patel Nagar, Bhagwat Nagar, Near Samrat Hospital, P.O. – Lohianagar, P.S. – Agamkuan, Distt. – Patna.

.... Petitioner

Versus

1. The State of Bihar, though Principal Secretary, Department of Finance, Government of Bihar, Patna.
2. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
3. The Commissioner, Commercial Taxes, Department of Finance, Government of Bihar, Patna.
4. The Assistant Commissioner of Commercial Taxes, Patna Special Circle, Patna.
5. Joint Commissioner of Commercial Taxes (Appeal) Central Division, Patna.

.... Respondents

==

Appearance:

For the Petitioner	:	Mr. Tanmoy Chakraborty, Advocate Mr. Brisketu Sharan Pandey
For the Respondents	:	Mr. Vikas Kumar, AC to P.A.A.G.

==

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

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 15-10-2015

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

The petitioner, who is a registered dealer in the State of Bihar, in terms of Bihar Value Added Tax (in short the VAT') Act, 2005, suffered an assessment proceeding, in which after payment of tax amount of over Rs. 2.20 Crores, a further demand of about Rs. 1.63 Crores has been raised. The petitioner being aggrieved by the aforesaid order of assessment, preferred statutory appeal before the Joint Commercial of Commercial Taxes (Appeal), Central Division, Patna, which is pending. In para 8 of the writ petition, it has been stated that on 13.06.2015, a stay application was filed, and thereafter, the matter was heard on the 1st October 2015, and stood adjourned for further hearing before Joint Commercial of Commercial Taxes (Appeal), Central Division, Patna, on 17th October 2015. In the meantime, notwithstanding the aforesaid, a demand process number 3309 as contained in Annexure – 5, dated 05.10.2015, has been served.

It is submitted that there is reasonable apprehension on the part of the petitioner that as this Hon'ble Court would not be functioning during the period of Puja vacation, respondent can precipitate the matter to cause irreparable loss and injury to the petitioner.

Learned counsel for the State who has received instructions submits, that this is merely an intimation of outstanding demand to the petitioner and so long as the appeal is pending, the matter is sub-judice before the Appellate Authority, no coercive steps are likely to be taken to enforce the demand or at least till the stay application is heard on 17th October 2015.

Learned counsel for the petitioner then points out that as per the assessment order itself, the demand note in respect of which (Annexure – 1), the total tax demanded was about Rs. 2.59 Crores, out of which, as noted above, the petitioner has already paid about Rs. 2.20 Crores. Further, Rs. 20,00,000/- (Twenty Lacs) has been deposited while preferring appeal. The rest of the demand that is being made is in relation to penalty and interest.

Considering the fact that the petitioner has paid almost entire assessed tax and the only amount that remains is the penalty and interest, which itself is subject matter of dispute in appeal. We deem it proper that during pendency of this appeal, the demand shall not be pressed.

This application is, accordingly, disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/N.A.F.R.

U			