IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10366 of 2012

==

M/S Mother India Construction Pvt. Ltd., A Company registered under the Companies Act, 1956, and having its registered office at Aspura House, Road No. 3, Sanjay Gandhi Nagar, Kankarbagh, Patna 800020 through its Manager and authorized person, Raj Kishor, S/O Sri Rama Shankar Singh, R/o PESU Staff Quarter No. 4, Mangals Road, Patna 800015

.... Petitioner

Versus

1. The State Of Bihar through the Commissioner-Cum-Principal Secretary, Department Of Commercial Taxes, Bihar, Patna, New Secretariat, Patna
2. The Joint Commissioner Of Commercial Taxes (Administrative), South Circle, Patna
3. The Deputy Commissioner Of Commercial Taxes, South Circle, Patna
4. The Assistant Commissioner Of Commercial Tax, Patna Division, Patna
5. The Treasury Officer, Patna Sadar, Patna

.... Respondents

With

==

Civil Writ Jurisdiction Case No. 10452 of 2012

==

M/. Mother India Construction Pvt. Ltd. a Company registered under the Companies Act, 1956 and having its registered Office at Aspura House, Road No. 3, Sanjay Gandhi Nagar, Kankarbagh, Patna , 800020 through its Manager and authorized person, Raj Kishor S/O Sri Rama Shankar Singh, R/o PESU Staff Quarter No.4 Mangles Road, Patna 800015

.... Petitioner

Versus

1. The State Of Bihar through the Commissioner-Cum-Principal Secretary Department Of Commercial Taxes, Bihar, Patna, New Secretariat, Patna
2. The Joint Commissioner Of Commercial Taxes (Administration), South Circle, Patna
3. The Deputy Commissioner Of Commercial Taxes, South Circle, Patna
4. The Assistant Commissioner Of Commercial Tax, Patna Division, Patna
5. The Treasury Officer, Patna Sadar, Patna

.... Respondents

With

==

Civil Writ Jurisdiction Case No. 10874 of 2012

==

M/S Mother India Construction Pvt. Ltd., a Company registered under the Companies Act, 1956 and having its Registered Office at Aspura House, Road No. 3, Sanjay Gandhi Nagar,Kankarbagh, Patna-800020 through its Manager and authorized person, Raj Kishor, S/O Sri Ram Shankar Singh, R/o PESU Staff

Quarter No. 4, Mangals Road, Patna- 800015

.... Petitioner

Versus

1. The State of Bihar through the Commissioner-Cum-Principal Secretary Department of Commercial Taxes, Bihar, Patna, New Secretariat, Patna
2. The Joint Commissioner of Commercial Taxes (Administration) Null South Circle, Patna
3. The Deputy Commissioner of Commercial Taxes, South Circle, Patna
4. The Assistant Commissioner of Commercial Tax, Patna Division, Patna
5. The Treasury Officer, Patna Sadar, Patna

.... Respondents

==

Appearance :

For the Petitioner : Mr. MRIGANK MAULI
For the State : MrVikas Kumar, AC to PAAG

==

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
And
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 23-01-2015

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

The petitioner, which is common to all the three writ applications, has filed the present matters seeking refund of amounts for three years being Rs. 89,59,442/-, Rs. 53,59,458/- and Rs. 78,91,155/-.

In the counter affidavit filed on behalf of the State, the only reason shown for not making the refund is that against the order of assessment passed by the Assistant Commissioner of Commercial Taxes, South Circle, Patna, revision applications under

Section 74 of the Bihar Value Added Act, 2005 have been filed in the Court of Commissioner, Commercial Taxes, Bihar which are pending and since the matter is sub judice, the refund case is premature.

Learned counsel for the State has sought to rely upon the provisions of Section 71 of the Bihar VAT Act, 2005 under which there is power to withhold the refund in certain cases.

In our view, the said provision is, in fact, against the respondents as it merely grants power to the competent authority with the previous approval of the Commissioner to withhold the refund if it is likely to adversely affect the revenue. No such specific order of the competent authority has been brought to our notice.

As a matter of fact, it is pointed out by learned counsel for the petitioner that while the total refund sought is to the tune of Rs. 2.2 crores, the amount at best that would be further realizable by the respondents would not exceed Rs. 10-15 lacs as the only reason for the said refund is the rate of tax leviable on stone dust which has been assessed and paid at 4% by the petitioner whereas the authorities are claiming the same at the rate of 12.5%. Such action on the part of the respondents is clearly a misuse of their authority. The refund even during the pendency of the revision application ought to have been made either of the entire amount or if any order had been passed to withhold the refund in the interest of revenue then the balance amount. Since no such order has been passed, the respondents are directed to refund the entire amounts for the said three years with statutory interest within a period of two months from the date of receipt/production of a copy of this order.

The respondents may take a Bank guarantee for the difference of the amount realizable from the petitioner after making calculation of difference of realizable amount from the petitioner if the revision is allowed by the Commissioner as also a Bank Guarantee of an amount of Rs. 26,30,158/- with regard to the demand notice for Entry Tax with respect to which an appeal filed by the petitioner is pending before the Joint Commissioner, Commercial Taxes (Appeal), Patna Division.

The writ applications are, accordingly, disposed of with the aforesaid directions.

(Ramesh Kumar Datta, J)

(Vikash Jain, J)

S.Pandey/-

U			