IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17515 of 2015

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M/s. New Swadeshi Sugar Mills, Prop. The Oudh Sugar Mills Ltd. P.O. and P.S. Narkatiaganj and District - West Champaran through its Executive Vice President (Comm.) Sushil Kumar Poddar son of Sri Madan Lal Poddar

.... Petitioner

Versus

1. The State of Bihar.
2. The Commissioner-cum-Principal Secretary, Commercial Taxes Department, Bihar having its office at Vikash Bhawan, Bailey Road, Patna.
3. The Deputy Commissioner of Commercial Taxes, In-charge, Bettiah Circle, Bettiah (West Champaran).

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Ramesh Kumar Agrawal, Advocate with
Mr. Shive Kumar, Advocate
For the Respondent/s : Mr. Vikash Kumar, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 27-11-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 18.8.2015 passed in Appeal Case No. PT-127 of 2015 by the Commercial Taxes Tribunal, Bihar, Patna by which it has been directed that if the petitioner deposits 40% of the disputed amount then the remaining disputed amount shall remain stayed during the pendency of the appeal.

Learned counsel for the petitioner submits that it is true that on the basis of an Audit Objection the Assessing Authority had reopened the proceedings and had sought for Ledger, Forms D-VIII and allotment orders regarding 4% sale but the petitioner had produced only two allotment orders which in all came to Rs.97,16,771/- and the claim of the petitioner was accepted only to that extent and upon the rest tax at the higher rate of 13.5% instead of 5% had been charged along with interest. Aggrieved by the same the petitioner approached the Appellate Authority and submitted all the allotment orders but in a mechanical manner the Appellate Authority had asked for Ledger and D-VIII forms. It is submitted that before the Appellate Authority the remaining allotment orders as also the invoices were produced but ignoring the same and repeating the fact that copy of allotment orders, Ledger, D-VIII and invoices, etc. having not been produced, the appeal has been dismissed.

It is submitted by learned counsel for the petitioner that the items dealt with by the petitioner are totally under the control and supervision of the Excise Authorities under Bihar Molasses Control Act, 1947 and thus there can be no purchase, sale, disposal, storage or transportation of the items with which the petitioner deals as the same are directly under the control and supervision of the Excise Commissioner and its subordinates. It is further submitted that the petitioner had all the relevant documents and materials in his possession and had also produced the same before the Appellate Authority but ignoring the same the appeal has been dismissed, which is contrary to even the reason given in the original order of assessment. Learned counsel thus submits that the Tribunal ought to have stayed the rest of the demand made apart from the 20% amount filed along with the appeal but the petitioner was directed to deposit a total 40% of the demand which is excessive considering that no liability remained against the petitioner in the given facts and circumstances.

Learned counsel for the State is unable to controvert the said submission of learned counsel for the petitioner except to state that the petitioner has deposited Rs.8.31 lacs which does not make up 20% of the disputed amount before the Tribunal.

On a consideration of the facts and circumstances of the case, we find that the petitioner has made out a prima facie case for stay of the remaining amount apart from the statutory amount payable for filing of the appeal. The impugned order dated 18.8.2015 of the Tribunal is thus modified holding that upon deposit of 20% of the disputed amount for the year 2011-12 the rest of the disputed amount shall remain stayed. It is clarified that in case the petitioner has not deposited 20% of the entire amount then the Tribunal shall ensure that the same is deposited by the petitioner.

With the above observations and directions, the writ application is disposed of.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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