IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4730 of 2015

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Shandong Weichai Huafeng Power (I) Pvt. Ltd., a private limited company incorporated under the Companies Act, 1956, having its registered office at Plot No. A/199, TTC Industrial Area, MIDC, Khairne, Navi Mumbai - 400710 and it's local office at 91 - Saryar Villa, Montessiori School Lane, Boring Road, Patna - 1 (Bihar) through its Regional Service Manager Sushant Ranjan son of Pramod Ranjan Sinha resident of Patliputra Colony P.O. and P.S. - Patliputra and District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner of Commercial Taxes, Bihar, Patna, Vikas Bhawan, New Secretariat, Bailey Road, Patna.
3. The Joint Commissioner of Commercial Taxes (Appelas), Central Division, Patna, Pant Bhawan, Bailey Road, Patna - 1.
4. The Commercial Taxes Officer, Patliputra Circle, Pant Bhawan, Bailey Road, Patna - 8000001.
5. The Branch Manager, HDFC Bank, Boring Road, Patna - 8000001.
6. Reliance Infratel Limited, 15th Floor, BISCOMAUN Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. R.K.Agrawal, Advocate
		Mr. A.K.Pandey, Advocate
		Mr. Shive Kumar, Advocate
		Mr. Sourav Suman, Advocate
		Mr. Satish Kumar, Advocate
For the State	:	Mr. Vikash Kumar, AC to PAAG
For the HDFC Bank	:	Mr. Dayanand Singh, Advocate
		Mr. Amaresh Kumar Sinha, Advocate

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 02-04-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the notices of demand both dated 25.2.2015 issued under Section 47 of the

Bihar VAT Act and for consequential reliefs.

In the course of submissions learned counsel for the petitioner submits that against the assessment order of the Commercial Tax Officer, the petitioner has already filed a revision application along with an application for stay for the period 2011-12 before the Commissioner of Commercial Taxes but no order has been passed thereupon and in the meantime, the Commercial Tax Officer has issued notices under Section 47 of the Act attaching the Bank account of the petitioner and also a direction to respondent nos. 5 and 6 not to make deduction of any amount.

It is submitted by learned counsel for the petitioner that the petitioner having invoked the jurisdiction of the Commissioner by filing application under Section 74 of the Act, the Commissioner was bound to consider and decide the same. In support of the same learned counsel relies upon a decision of a Division Bench of this Court in the case of Rakesh Kumar & Ors. Vs. The State of Bihar and Ors.

From a consideration of the provisions of Section 74 of the Bihar VAT Act it is evident that the revisional power has been conferred upon the Commissioner which after the amendment in 2006 is wide enough to exercise such revisional jurisdiction with respect to any order which is erroneous and not only orders which are also prejudicial to the interest of revenue. However, the power is still conferred as suo motu upon the Commisioner to call for any record of the proceedings.

In our view while there is no right to invoke jurisdiction of the Commissioner but the Party has right to file an application before the Commissioner with a request to exercise his revisional powers under Section 74 of the Act. Once such an application is filed, the Commissioner would be obliged to take decision as to whether he would admit the said revision application or not and exercise revisional power for good grounds and reasons. It would not be proper for the Commissioner to just keep the application pending without deciding as to whether to proceed under the revisional jurisdiction, leaving it in the meantime for his subordinates to proceed against the dealers by invoking the powers under Section 47 of the Act.

In the aforesaid view of the matter, the writ application is disposed of with a direction to the Commissioner of Commercial Taxes to take a decision as to whether he would proceed with the revision application filed by the petitioner or not.

It would also be open to the petitioner to press his application for stay before the Commissioner who shall decide the same in accordance with law.

Let the Commissioner take a preliminary decision as directed within a period of two weeks from the date of receipt/production of a copy of this order.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Anjana Mishra, J)

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