IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8172 of 2015

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Kanti Bijlee Utpadan Nigam Limited, a joint venture of National Thermal Power Corporation and Bihar State Electricity Board, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at M.T.P.S., Kanti, P.S. Kanti District- Muzaffarpur through its Dy. Manager, (Finance & Accounts) Juggi Lal Gupta son of Shri Rajendra Prasad Gupta resident of D- 10/6, M.T.P.S. Colony, P.O. Kanti Thermal & P.S. Kanti, District, Muzaffarpur.

.... Petitioner

Versus

1. State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.
2. Deputy Commissioner of Commercial Taxes, West Circle, Muzaffarpur
3. Assistant Commissioner of Commercial Taxes, West Circle, Muzaffarpur.
4. Commercial Taxes Officer, West Circle, Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy with M/S Sanjeev Anwar & P.K.Mishra, Advocates

For the Respondent/s : Mr. Piyush Lal, AC to PAAG

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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 22-05-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner has approached this Court against a notice dated 15.5.2015 issued by the Assistant Commissioner of Commercial Taxes, West Circle, Muzaffarpur attaching the bank account of the petitioner maintained with State Bank of India, Kanti Thermal Power Station, Muzaffarpur under Section 47 of the Bihar Value Added Tax Act, 2005.

It is submitted by learned counsel for the petitioner that on the basis of the report of the Comptroller and Auditor General of India stating that the goods in question ought to have been taxed at the rate of 16% and not 8% for the period 2008-09, as admitted by the petitioner, proceedings were initiated upon reopening of the matter under Section 33 of the Bihar VAT Act and thereafter not only tax has been imposed at the higher rate but three times the tax amount has been imposed as penalty by the Assessing Officer without looking into the various decisions of the Supreme Court and of this Court.

It is further submitted by learned counsel that there is a genuine dispute regarding categorization of Light Diesel as other petroleum products as known in common parlance by the trade and in the various States, like Maharashtra, it has been specifically categorized as Motor Oil. Learned counsel, however, alleges that it should be taxed at the rate of 8% for petroleum products.

It is further submitted by learned counsel that the petitioner has filed an appeal within the statutory time period before the Tribunal but since the Tribunal is not functional the petitioner is unable to get any relief and in the meantime coercive action has been taken by the respondents under Section 47 of the

Bihar VAT Act, whereas the petitioner has already deposited the entire amount of tax.

On a consideration of the aforesaid facts and circumstances, the writ application is disposed of with a direction to the Tribunal to consider and dispose of the appeal filed by the petitioner within a period of three months from the date of receipt/production of a copy of this order.

Until the disposal of the appeal, no coercive step shall be taken against the petitioner.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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