**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.6123 of 2016**

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1. M/s Global India Marketing Co. a Proprietary Concern having its office at Rajendra Chowk, Hazipur, P.O. and P.S. Hazipur, District - Hazipur

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary - Cum - Commissioner, Commercial Taxes Department, New Secretariat, Patna
2. The Joint Commissioner of Commercial Taxes ( Appeals ) Tirhut Division, Muzaffarpur
3. The Assistant Commissioner of Commercial Taxes, Hazipur Circle, Hajipur

.... .... Respondent/s

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**Appearance :**
For the Petitioner/s : Mr. Gautam Kejriwal
Mr. Prakash Chandra Agrawal
Ms. Aishwarya Riti
For the Respondent/s : Mr. Vikash Kumar, J.C. 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)**

3 27-04-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks interim stay of the appellate order dated 04.02.2016 passed by the Joint Commissioenr of Commercial Taxes (Appeals), Tirhut Division, Muzaffarpur, by which he has upheld the order imposing penalty passed by respondent No.3, Assistant Commissioner of Commercial Taxes, Hajipur Circle, Hajipur.

It is submitted by learned counsel for the petitioner that the petitioner has already moved the Commercial Taxes Tribunal but he has to approach this Court for stay, as the Tribunal itself was not fully constituted to hear the matter on account of the transfer of the Chairman of the Tribunal.

The stand of learned counsel for the petitioner is that the petitioner firm, being a proprietorship firm, had substantially closed down its purchase of stock from the commencement of financial year 2014-15 and the final stock of Rs.4,65,080/- was sold out to M/s. Chaursia Electricals Pvt. Ltd., a company floated by the family of the proprietor of the petitioner and had also indicated the same in the returns filed for the quarter 01.04.2014 to 30.06.2014 by the petitioner and annual return in Form RT-3 as well. Similarly, in the return filed by M/s. Chaurasia Electrical Pvt. Ltd. the purchase of stock of Rs.4,65,080/- made from the petitioner during the period 2014-15 was shown as a sale of final stock. The tax with respect to the same was also deposited with the Department. However, the respondents took no note of the information given by the petitioner at the time when the inspection of the business premises of the petitioner was made on 15.09.2014. A proceeding was initiated under Section 56 (4) (b) of the Bihar VAT Act in which the petitioner appeared but some of the documents as also the books of accounts could not be produced by him. For the said reason alone, the impugned order dated 14.10.2014 imposing penalty of Rs.22,71,540 was passed by the Assistant Commissioner, Hajipur Circle, Hajipur. Aggrieved by the same, the petitioner filed an appeal before the Joint Commissioner of Commercial Taxes (Appeals), Tirhut Division, Muzaffarpur, where the appeal was also dismissed which, according to the petitioner, was without giving adequate opportunity of hearing by an ex parte order. Aggrieved by the appellate order dated 04.02.2016, the petitioner again filed an appeal before the Commercial Taxes Tribunal, Bihar on 08.03.2016 along with stay petition seeking stay of the impugned order as also the original order but since no order could be passed by the Tribunal, the petitioner now seeks stay of the impugned order before this Court.

Learned counsel for the petitioner submits that in view of the fact that the stocks are of the company M/s. Chaurasiya Electrical Pvt. Ltd. and not of the petitioner and the same has already been reflected in the returns filed both by the petitioner firm and the company, there was no question of any evasion of tax by the petitioner. It is submitted that the petitioner has not yet been able to close down its business on account of certain past transactions which remained to be settled and closed.

It is also submitted by learned counsel for the petitioner that the respondents have not only valued the stocks at MRP which is not permissible, rather penalty has been imposed by applying tax at the rate of 13.5% on all the goods, whereas approximately 40% of the stocks were liable to tax at the lower rate of 5%. It is thus submitted that if the correct sale price as also the correct rate of tax is applied, the same would result in the penalty being a little over 15% of the penalty that has been imposed, although no penalty is leviable at all.

Learned counsel for the State, on the other hand, submits that the petitioner could not produce documents like books of accounts to the satisfaction of the respondent authorities which led to passing of the penalty order and, therefore, it is unassailable. The returns filed by the petitioner have also not been deposited with the Department.

On a consideration of the facts and circumstances of the case, it is directed that pending hearing of the appeal by the Tribunal, the balance amount of penalty shall remain stayed, if the petitioner deposits an amount of Rs.4,00,000/- within a period of two weeks from today.

The writ application is, accordingly, disposed of with the aforesaid direction.

**(Ramesh Kumar Datta, J)**

V.P.Sinha/-

**(Sudhir Singh, J)**

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