IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17731 of 2015

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Cinepolis India Pvt. Ltd., A Company incorporated under the Companies Act, 1956 having its registered office at 3rd Floor Plot No. 58, Sector - 44, Gurgaon, Haryana through its Authorized representative/signatory Sri Hemant Budakoti Son of Sh. S.P. Budakoti, presently working as Legal Officer in the Petitioner Company … … Petitioner

Versus

1. The State of Bihar, Patna through the Principal Secretary, Department of Finance, Government of Bihar, Patna
2. The Commissioner Commercial Taxes-cum-Principal Secretary, Department of Commercial Taxes, Government of Bihar, Patna
3. The Joint Commissioner Commercial Taxes (Administration), Patna East And West Division, Patna
4. The Deputy Commissioner of Commercial Taxes, Patna Central Circle, Patna
5. Commercial Taxes Officer, Patna Central Circle, Patna
6. The Accountant General, Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Y.V.Giri, Sr.Advocate with Mr. Brisketu Sharan Pandey, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, AC to PAAG
For the A.G. Bihar	:	Mr. Siddharth Prasad, Advocate

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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)

5 11-01-2016 Heard learned counsel for the petitioner and learned counsels for the State and for the Accountant General, Bihar.

The petitioner seeks quashing of the notices dated 27.1.2015, 18.4.2015 and 7.1.2015 by which the assessments of the petitioner have been reopened and calling upon the petitioner to pay entertainment tax under the Bihar Entertainment Tax Act, 1948 despite there being a valid exemption in its favour.

It is the stand of the petitioner that it runs a multiplex in P & M Mall, Industrial Area, Patliputra, Patna and in the course of setting up of the said Cine-Theatres it had applied for exemption from entertainment tax on 14.7.2011 before the Joint Commissioner (Administration), Commercial Taxes, Patna East and West division and after following the due procedure, the Joint Commissioner by his order dated 27.3.2012 had granted exemption from 22.7.2011 to 21.7.2016 pursuant to the Exemption Notification being SO-53 dated 18.3.2010 issued by the State Government in this regard.

It appears that subsequently the office of the Accountant General (Audit), Bihar, Patna had by its letter dated 5.1.2015 raised an objection that the said exemptions are available to the owner of the theatre who has made investment in construction of the theatre, whereas the petitioner is a mere lessee of the premises and the actual owner of the premises is P & M infrastructure and thus the exemption available to one person cannot be passed on to another person.

Thereafter the respondents have issued notices of hearing under Section 33 of the Bihar Value Added Tax Act, 2005 to the petitioner for failure to assess the tax liability correctly.

Mr.Y.V.Giri, learned Sr.Counsel for the petitioner submits that the petitioner being covered by the exemption order issued by the competent authority there is no question of the petitioner having failed to file the return correctly merely because there is an objection by the office of the Accountant General (Audit) and therefore all such notices issued by the respondents are non est and illegal as no assessment can be made of the petitioner so long such exemption order stands.

Learned counsel for the State has sought to rely upon the report of the Accountant General, Bihar and the provisions of Section 33 of the Bihar VAT Act, 2005 to justify the notices and further submits that the petitioner may be directed to appear before the authority and answer the said notices.

Section 33 of the Bihar VAT Act, 2005 provides that in case an objection is made by the Comptroller and Auditor-General of India in respect of an assessment or re-assessment made or scrutiny of any return filed under this Act, the prescribed authority shall proceed to re-assess the dealer with respect to whose assessment or re-assessment or scrutiny, as the case may be, the objection has been made. It is evident from the said provision that Section 33 of the Act can come into play only when an objection is made with regard to assessment or re-assessment or scrutiny of any return, whereas in effect the objection made by the office of the Accountant General is regarding wrong grant of exemption to the petitioner.

In our view, so long as the order of exemption itself continues as it is, there can be no question of any assessment or re-assessment of the petitioner and thus the notices issued by the respondents under Section 33 of the Act do not appear to have any validity.

In the aforesaid view of the matter, the writ application is allowed and the impugned notices are quashed. It shall, however, be open to the respondents to take appropriate steps in the matter with regard to the exemption certificate issued to the petitioner in accordance with law.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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