IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3731 of 2015

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Bihar Electricity Board (Now as Bihar State Power Holding Company) having its office at Vidyut Bhawan, Bailey Road, P.O. G.P.O., P.S. Kotwali, District- Patna through its Dy. General Manager (Accounts), Nand Kumar Jha, son of Late Shakti Nath Jha, resident of C/2 old BSEB Colony, P.O. + P.S.- Shastri Nagar, Patna

.... Petitioner

Versus

1. State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna
2. Commercial Taxes Tribunal through its Secretary, having its office as Kautilya Bhawan, Anta Ghat, Patna
3. Deputy Commissioner of Commercial Taxes, Special Circle, Patna.
4. Asstt. Commissioner of Commercial Taxes, Special Circle, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. D.V.Pathy
Mrs. Manju Jha

For the Respondent : Mr. Pawan Kumar, A.C. to G.A.9

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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)

10 05-01-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The present matter presents the sorry state of affairs prevailing in the Commercial Taxes Department of the State. On the one hand, they did not dispose of the matter despite repeated orders passed by the Tribunal as was required. From the copy of the order sheet as has been filed by the respondents themselves in the counter affidavit it appears that, on the other hand, they went on to issue notice to the petitioner to make payment of the demand due or produce stay order.

While going through the order sheet of the Tribunal, we find that the proceedings before the Tribunal is also not being conducted in a manner, which is conducive to disposal of the matter in a judicious manner. The petitioner in the present matter has filed the revision before the Tribunal against the order of the appellate authority under the Bihar Electricity Duty Act. The principal stand of the petitioner was that the electricity duty is payable only after taking into account the value of energy as defined under Section 2 (ee) of the Act as also for giving benefit of exceptions and exemptions as provided under Section 3 (2) of the Act, which has not been done by the Assessing Officer or the Appellate Authority, which led to the filing of the revision. The revision has been filed along with an application for stay. It appears that in the proceedings before the Tribunal, which deals only with cases relating to the Commercial Taxes Department, no proper provision has been made by the Commissioner of the Commercial Taxes Department for receiving of a copy of the appeal or revision filed before the Tribunal by an authorized counsel for the Department and in every matter the notices have to be issued to the Commissioner of Commercial Taxes Department, which appears to be most uncalled for and leads to unnecessary delay in the matter, particularly where urgent orders are required. It is also being complained that the application for stay even on the questions, which are mainly of law, is not being taken up but is required to be taken up because of coercive steps being taken by the Department, yet the same is being delayed on account of issuance of notices to the Commissioner, Commercial Taxes and on account of non-receipt of records from the lower authorities. Learned counsel for the petitioner had even framed in the present matter before the Tribunal two specific questions of law to be answered by the respondents, yet despite the presence of counsels for the State in the matter again a copy of the same questions framed by the petitioner was issued to the Commissioner of Commercial Taxes in order to know his view in the matter.

This Court fails to understand as to how after the appeal has been filed any such procedure ought to have been adopted by repeatedly sending notices to the Commissioner of Commercial Taxes instead of proceeding to hear the matter after giving a reasonable opportunity to the State counsels to meet the said questions after due instructions from the departmental authorities.

In the aforesaid view of the matter, the writ application is disposed of with a direction to the Tribunal to hear and dispose of the revision on merits. It is made clear that no further notices are required to be issued to the parties and they should appear before the Tribunal on 22nd January, 2016 at 11.00 A.M. on which date the Tribunal shall proceed to hear the matter in accordance with law and dispose of the same within a period of six weeks from the date of appearance as fixed in this order. If the lower court records have not yet been sent, then the departmental authority shall ensure that they are sent and received by the Tribunal positively within a week from 22nd January, 2016.

Until the final decision of the Tribunal, no coercive steps shall be taken by the Department against the petitioner.

Learned counsel for the State shall file a supplementary affidavit enclosing a copy of page No.15 of the counter affidavit, which has not been filed with the main counter affidavit but is present in the second copy of the counter affidavit while filed in the Court. Let the same be done for completing the records within a period of one week from today.

Let a copy of this order be sent to the Commissioner, Commercial Taxes, Bihar for taking appropriate steps with regard to conduct of cases before the Tribunal on behalf of the State in the light of the observations made in this order.

V.P.Sinha/- **(Ramesh Kumar Datta, J)**

(Sudhir Singh, J)

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