IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5847 of 2015

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M/s A2Z Maintenance And Engineering Services Ltd. @ M/s A2Z Infra engineering through its Legal Excutive Mr. Ankur Gupta, having its Registered Office at 0-116, First Floor, Shopping Mall, DLF City, Phase -I, Gurgaon- 122002, (Haryana) and Regional Office at- Dev sidhi Palaza, Kankarbagh, Patna-80001.

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner, Commercial Tax Department, New Secretariat, Patna.
2. Assistant Commissioner of Commercial Taxes, Commercial Tax Department, Special Circle, Patna.
3. M/S North Bihar Power Distribution Company Limited through its Managing Director, VidutheBhawan, Bailey Road, Patna.
4. M/s N.H,P.C. Limited (Formerly known as National Hydroelectric Power Corporation Ltd.) through its Managing Director, Vidhute Bhawan, Bailey Road, Patna-80001.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh Mr. Anurag Saurav
For the State	:	Mr. Vikash Kumar, AC to PAAG
For NHPC	:	Mr. Rajeshwar Prasad
For NBPDCL	:	Mr. Anand K. Ojha, Addl. SC

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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)

14 19-01-2016 Heard learned counsel for the petitioner and learned counsels for the State, National Hydroelectric Power Corporation Limited and North Bihar Power Distribution Company Limited.

The writ application has been filed for quashing the order dated 2.2.2015 passed by the Assistant Commissioner, Commercial Taxes, Special Circle, Patna under Section 31 of the Bihar VAT Act, 2005 by which the assessment order has been passed ex parte against the petitioner.

The submission of learned counsel for the petitioner is that the order has been passed ex parte and the tax liability has been imposed on non-submission of the declaration Forms, namely, Form-C to claim concessional rate of tax under Section 3(b) of the Central Sales Tax Act, 1956 and the said C-Form could not be produced because the Respondent No. 4, the National Hydroelectric Power Corporation which is acting as the Project Manager for the Respondent No.3, the North Bihar Power Distribution Company Limited, is not handing over the C-Form to the petitioner.

The stand of Respondent No. 4 is that as per Clause 8.5 of the agreement between the parties, the entry tax was to be paid by the petitioner and subsequently, to be reimbursed by the NBPDCL after receipt of goods on site destination. It is submitted that since the petitioner has violated the terms of the agreement by not paying the entry tax, therefore, the Form-C could not be issued.

Faced with the aforesaid situation, learned counsel for the petitioner relies upon a decision of this Court rendered on

13/3/2015 in CWJC No.14333 of 2014 in the case of Tata International Limited Vs. The State of Bihar and anr.

So far as that case is concerned, it was in very different conditions of non-issuance of the Form-C by the authorities of the Commercial Taxes Department to the petitioner of the said case on the ground that certain tax dues of earlier year was there. In the said circumstances, this Court had held that the authorities cannot withhold issuance of Form-C in order to recover the dues of the petitioner of that case keeping in view the further fact that there was specific provision for realization of such tax arrears by various Court processes including realization as arrears of land revenue.

The present matter is not one of issuance of Form-C by taxing authority to the dealer so as to hand them over to the person from whom the purchases have been made rather it is a case of the petitioner seeking to get the Form-C from other dealer in the present matter, NHPC on behalf of the North Bihar Power Distribution Company.

In view of the contractual violation pointed out by the respondents which is admitted by the petitioner, we do not think that there can be any application of principles laid down in the above-mentioned case in the present matter.

The petitioner having violated the provisions of its contract, it cannot come to this Court and claim reliefs under the equitable jurisdiction.

The writ application is, accordingly, dismissed.

We however, make it clear that since the petitioner has statutory remedies available so far as the order dated 2.2.2015 is concerned, it shall be open to it to avail the same in accordance with law.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

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