IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5850 of 2016

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Fastrack Communication Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its office at House No.1 Saraswati Niwas Dr. Ram Govind Singh Path District- Patna behind Punch Shiv Mandir through its Manager Shri Sanjiv Kumar Mishra son of Shri Harendra Mishra, resident of Gopal Road Sultanganj, P.O.+P.S.- Sultanganj, District- Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, having its office at Vikash Bhawan, Bailey Road, Patna.
2. Commercial Taxes Tribunal through its Secretary having its office at Kautilya Bhawan, Antaghat, Patna.
3. Commercial Taxes Officer, Gandhi Maidan, Circle, Patna.

.... Respondents

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with

Civil Writ Jurisdiction Case No.6041 of 2016

Fastrack Communication Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its office at House No.1 Saraswati Niwas Dr. Ram Govind Singh Path District- Patna behind Punch Shiv Mandir through its Manager Shri Sanjiv Kumar Mishra son of Shri Harendra Mishra, resident of Gopal Road Sultanganj, P.O.+P.S.- Sultanganj, District- Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, having its office at Vikash Bhawan, Bailey Road, Patna.
2. Commercial Taxes Tribunal through its Secretary having its office at Kautilya Bhawan, Antaghat, Patna.
3. Commercial Taxes Officer, Gandhi Maidan, Circle, Patna.

.... Respondents

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Appearance :

(In both the cases)

For the Petitioner/s : Mr. D.V.Pathy with M/S Manju Jha, Ram Naresh Jha, D.B.Gupta, Advocates

For the Respondent/s : Mr. Purnendu Singh, G P 27

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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)

4 11-05-2016 Heard learned counsel for the petitioner and learned Government Pleader No.27 for the State.

The petitioner seeks quashing of the common order dated 25.11.2015 of the Commercial Taxes Tribunal, Bihar passed in Appeal Case No.PT-71/2014 and Appeal Case No. PT-72/2014 for the periods 2009-10 and 2010-11 by which the appeals filed by the petitioner against the orders dated 3.12.2013 passed by the Joint Commissioner, Commercial Taxes (Appeals), Patna East and West Division were dismissed on the ground that the petitioner has not deposited 20% of the assessed tax as required by Section 72(2) of the Bihar VAT Act, 2005 and by the said order the order of the Joint Commissioner was modified to the extent that if the petitioner deposits 20% of the disputed amount and produces evidence then the appeals could be heard and decided on merit by speaking order.

The petitioner is a private limited company and is engaged in the business of sale of mobile phones and is a registered dealer under the Bihar VAT Act and Central Sales Tax Act. The petitioner claims to have deposited entire amount of VAT on the said goods. Proceedings were initiated against the petitioner under Section 8 of the Bihar Tax On Entry of Goods into Local Area for Consumption, Use or Sale therein Act, 1993 for imposition of penalty upon the petitioner on account of non-payment of entry tax as also non-registration as a dealer under the Entry Tax Act for both the years. Aggrieved by the orders of assessment dated 9.10.2013 and 13.4.2013 the petitioner filed the aforesaid two appeals before the Joint Commissioner, Commercial Taxes.

The stand of the petitioner is that since the demand notices have been issued in Form N-VIII under Sections 25 and 39 of the Bihar VAT Act read with Rule 27 thereof, the petitioner had deposited 20% of the assessed tax for both the years at the time of filing the appeal. Since the same had been deposited in Form CH-1 of the Bihar VAT Act the appeal of the petitioner was rejected on the ground that the deposit ought to be made under the relevant form of the Entry Tax Act and the deposits in question could not be considered as deposits under the Entry Tax Act. Thus the appeal was dismissed on the ground of non-compliance of Section 72 of the Bihar VAT Act. Aggrieved by the same the petitioner filed two appeals before the Commercial Taxes Tribunal, which upheld the orders of the Joint Commissioner (Appeals) but with the direction to the petitioner to deposit 20% of the assessed amount for both the years and then the appeals could be decided on merit.

Learned counsel for the petitioner submits that even if the worst view is taken in the matter then in terms of the decision of this Court in the case of United Breweries Ltd. vs. State of Bihar and others : (2006) 143 STC 106, the department was obliged to adjust the amount of tax demanded under the Entry Tax Act from the tax paid under the Bihar VAT Act and should not have relied upon mere technicality, since after the said amount was deposited no amount of entry tax would have remained payable. It is submitted that the said decision of this Court rendered ten years back has been reiterated recently by the order dated 31.7.2015 passed in CWJC No. 7623 of 2015 (Shell India Markets Pvt. Ltd. vs. State of Bihar & Anr.) and its analogous cases and thus it has to be held that so far as the amount paid under the Bihar VAT Act for the said goods is concerned, the same has to be treated as having already been paid under the Bihar Entry Tax Act, 1993.

In the said circumstances, since the amount of tax paid under the Bihar VAT Act covers the entire tax assessed, there is no tax liability against the petitioner even after the said assessment, apart from the penalty amount under Section 28(1) of the Bihar VAT Act read with Section 8 of the Bihar Entry Tax Act. Thus the requirement of Section 72(2) of the Bihar VAT Act regarding payment of 20% of the tax assessed stands complied by the petitioner in both the appeals even without the further deposit that the petitioner had made in Form CH-1 under the Bihar VAT Act instead of the relevant Form under the Bihar Entry Tax Act.

For the aforesaid reasons, the impugned order dated 25.11.2015 of the Commercial Taxes Tribunal, Bihar as also the orders dated 3.12.2013 of the Joint Commissioner, Commercial Taxes (Appeals) are quashed and the Joint Commissioner (Appeals) is directed to proceed further in the matter in accordance with law considering the requirement as having already complied with under sub-section (2) of Section 72 of the Act.

Both the writ applications are allowed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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