IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5563 of 2016

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Kezstroy Services Infrastructure India Private Limited

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhash Ranjan Thakur

For the Respondent/s : Mr.Anil Kumar Sinha, 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)

2 01-04-2016 Learned counsel for the petitioner submits that the petitioner having been awarded work contract by M/s. Shree Cements Ltd. for erection of Cement Plant at Aurangabad, pursuant to which it had imported the old and used plant and machinery in 4th quarter 2012-13, for which incoming Suvidha Number for Rs.13,15,79,033/- was generated. It is further submitted that the petitioner had received advance payment from the principal company for Rs.9,22,50,000/-, for which Rs.46,12,500/- has been deducted and Form C-II issued.

It is stated by learned counsel for the petitioner that a notice was issued by the Assistant Commissioner of Commercial Taxes, Special Circle, Patna, initiating proceedings under Section 31 of the Bihar Value Added Tax Act, 2005, including penalty proceedings for which the petitioner's representative appeared and prayed for granting a week's time but the matter was taken up within five days and an ex parte order imposing tax and interest of Rs.88,90,354/- and penalty of Rs.2,17,72,296/- was passed, against which the petitioner filed two appeals before the Joint Commissioner of Commercial Taxes (Appeals) along with stay petition. It is submitted that the stay petition has been disposed of by order dated 03.03.2016 directing the petitioner to pay 40% of the disputed amount and also penalty imposed,i.e., Rs.1,22,65,060/-, which the petitioner in view of strong prima facie case ought not to have been directed and the stay should have been granted on the entire amount, as more than 50% of the actual demand of tax and interest has been paid for which Form C-II for Rs.46,12,500/- was produced.

On a consideration of the aforesaid facts and circumstances and considering the fact that the petitioner has made out a strong prima facie case in the matter and the further fact that an amount of Rs.46,12,500/- has already been paid against the tax liability plus interest amount of Rs.88,90,354/-, we are of the view that in the interest of justice if the petitioner deposits further an amount of Rs.10,00,000/- within a period of two weeks from today, then the appeals of the petitioner shall be heard on their own merit without insisting upon any further deposit.

The order dated 03.03.2016 of the appellate authority is modified to the above extent.

The writ application is disposed of in terms of the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

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