IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4357 of 2017

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Tractors India Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its office at N.H. 30, Bye Pass Road Ranipur Pazawa P.O. + P.S. Mehdiganj, District – Patna through its authorized signatory, Aftab alam son of Manzoor Alam, resident of Arya Samaj Mandir Road, RPS More, P.O. + P.S. Danapur, Distt. Patna.

.... Petitioner

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna,
2. Assistant Commissioner of Commercial Taxes, Integrated Chek Post Karmnasha.

.... Respondents

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Appearance:

For the Petitioner	:	Mr. D.V. Pathy, Ms. Manju Jha and Mr. Sadashiv Tiwari, Advocates.
For the Respondents	:	Mr. P.N. Shahi, AAG 6, Mr. Vikas Kumar and Mr. Dhirendra Kumar, AC to AAG 6.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-03-2017

Considering the fact that against the order passed by the respondent no. 2 imposing penalty under Section 56 (4)(b) of The Bihar Value Added Tax Act, 2005 (hereinafter refereed to as 'the Act'), remedy of statutory appeal is available to the petitioner. For the present, it is not proper for this Court to go into various aspects of the matter which includes certain factual aspects and decide the same in this Writ Petition as the Appellate Authority would be in a better position to appreciate all the factual aspects and take a decision.

2. However, at the same time, *prima facie*, we find that the documents were produced but considering some delay in production of the documents, the question would be as to whether penalty could be imposed as the documents were not produced at a particular point of time. Having considering the provisions of Section 56 (4)(c) of the Act, the question as to whether penalty could be imposed in the facts and circumstances of this case becomes a relevant question which has to be decided by the Appellate Authority and, at this stage, when a *prima facie* case is made out where imposition of penalty becomes questionable, we deem it appropriate to restrain the respondents from recovering the penalty during the pendency of the appeal.

3. In case the petitioner prefers an appeal before a competent Appellate Authority within 15 days from today, the Appellate Authority shall decide the appeal in accordance to law after hearing all concerned within 45 days thereof and till the appeal is not decided, coercive action for recovery of the penalty shall be kept in abeyance, subject to the condition that petitioner submits a bank guarantee to the tune of rupees nineteen lacs to the competent authority, on this being done the vehicle along with goods in question

of the petitioner shall be released immediately.

4. With the aforesaid, the Writ Petition stands disposed of.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Dilip, AR.

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	