IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2669 of 2017

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1. M/s Baba Project Pvt. Ltd., N.T.P.C. Contractor Colony, Kahalgaon, Bhagalpur through its site Incharge Jitendra Kumar, Son of Jeewan Lal Sharma, Resident of Saket Puri, East of Bahadurpur, Near Bazar Samiti, P.S.- Bahadurpur District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary Cum Commissioner of Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Commissioner, Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Joint Commissioner, Commercial Taxes, (Administration), Bhagalpur Circle, Bhagalpur.
5. The Joint Commissioner, Commercial Taxes, (Appeal) Bhagalpur Circle, Bhagalpur.
6. The Deputy Commissioner, Commercial Taxes, Bhagalpur Circle, Bhagalpur.
7. The Assistant Commissioner, Commercial Taxes, Bhagalpur Circle, Bhagalpur.
8. The Branch Manager, State Bank of India, RMCC, Bariatu, Ranchi (Jharkhand).

.... Respondent/s

Appearance :
For the Petitioner/s : Mr. Sushmita Mishra, Advocate
For the Respondent/s : Mr. Vikash Kumar- SC-11
Mr. Sriram Krishna, Advocate
For S.B.I. Mr. Rakesh Kumar Singh, Advocate

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

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 09-05-2017

Petitioner has filed this writ petition under Article 226 of the Constitution. The petition was filed on 17.2.2017 and a prayer is made to stay the special mode of recovery initiated under Section 47 of the Bihar Value Added Tax Act, 2005.

Shri Vikash Kumar appears on behalf of the State. He receives notice and points out that application of the petitioner was pending consideration before the appellate authority. On 7.1.2017 the appeal was taken up for consideration. It was directed to be listed on 18.1.2017. On 18.1.2017, notice was issued to all concerned. An application for stay was already filed before the appellate authority on 7.3.2017, but all of a sudden, it was withdrawn on 20th of March, 2017 and this petition is now being prosecuted.

Taking note of the objections raised by the learned counsel for the State, we are of the considered view that once the matter is *subjudice* before the appellate authority and initially the petitioner has invoked the appellate jurisdiction for stay, parallel invoking of the writ jurisdiction of this Court was not called for. The petitioner should prosecute the appeal, seek interim protection or stay from the appellate authority and only after adverse orders are passed or the application is decided by the appellate authority, a cause will accrue to the petitioner seeking exercise of extra ordinary Jurisdiction of this Court under Article 226 or 227 of the Constitution.

Accordingly, in the peculiar facts and circumstances of the case, we dispose of this writ petition, grant liberty to the petitioner to raise all grounds as are raised in the present writ petition before the appellate authority and seek protection against the demand raised. On an application for stay being filed, the appellate authority shall decide the application for stay within a period of 15 days thereafter.

In case the petitioner has any grievance with regard to the manner in which the application is decided, he shall have liberty to challenge the same afresh in accordance with law.

With the aforesaid, the application is disposed of.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.5.2017
Transmission Date	N/A