IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16684 of 2016

Speedcrafts Ltd., a Company incorporated under the Companies Act having its at Layak Bhawan Boring Canal Road, P.S. Budha Colony, District-Patna through its Director (Works) Shyam Sunder Khadria son of Late Prahlad Rai Khadria resident of Layak Bhawan, Boring Canal Road, P.O.-G p o PS.-Budha Colony, District Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhavan, Patna.
2. The Deputy Commissioner, Commercial Taxes, Patna Central, Patna
3. The Assistant Commissioner, of Commercial Taxes, Patna Central Circle, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 19831 of 2016

Brahmputra Infrastructure Ltd., a company incorporated under the Companies Act, 1956 having its office at 83, Patliputra Colony, P.O.+P.S. Patliputra, District- Patna through its Mohit Agarwal, son of Late Shri Pawan Agarwal, resident of A-7, Mahipal Pur, P.O.+P.S. Mahipal Pur, New Delhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhavan, Bailey Road, Patna.
2. Dy. Commissioner of Commercial Taxes, Special Circle, Patna.

.... Respondent/s

Appearance :

(In CWJC No.16684 of 2016)

For the Petitioner/s	:	Mr. D V Pathy Ms. Manju Jha and Mr. Sadashiv Tiwary
For the Respondent/s	:	Mr. Anil Kumar Sinha, GA1 Mr. Pawan Kumar, AC to GA 1

(In CWJC No.19831 of 2016)

For the Petitioner/s	:	Mr. D.V.Pathy Ms. Manju Jha and Mr. Sadashiv Tiwary
For the Respondent/s	:	Mr. Vikash Kumar, SC 11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 31-08-2017

Challenging the order dated 29.08.2016 as contained in Annexure-2, CWJC No. 16684 of 2016 has been filed. By the impugned order, the Commercial Taxes Department, Bihar, Patna has rejected an application filed by the petitioner for issuance of Form-C for the period 01.04.2016 to 30.06.2016.

In CWJC No. 19831 of 2016 challenge is made to a similar order passed by the Commercial Taxes Department vide Annexure-3 on 23.06.2016, denying issuance of Form-C to the petitioner.

Petitioners in both the cases are registered dealers and they question the non-grant of Form-C, primarily on the ground that it has been done by displaying the order in the website showing that the application is rejected without recording any reason. It is further stated that despite payment of all admitted taxes as per the Return the summary rejection of Form-C certificate is illegal. Various grounds are raised in the writ petition and placing reliance on a judgment rendered by a Co-ordinate Bench of this Court in CWJC No. 14333 of 2014 (Tata International Limited vs. The State of Bihar & Ors.) decided on 13.03.2015, it is argued that on account of non-payment of duty or tax of a previous year for the purpose of duty non-paid and its recovery, denial of Form-C is unsustainable. Accordingly, Mr. D B Pathi, learned counsel for the petitioner, argued that the case is squarely covered by the judgment rendered in the case of Tata International Limited (supra). He argues that all the taxes admitted in the Return having been deposited, denial based on notification dated 06.09.2012 and 20.03.2013, is illegal in view of the law laid down in the case of Tata International (supra).

Respondents have filed a detailed counter affidavit to which rejoinders and additional supplementary affidavits have been filed and they strongly refuted the contention that the taxes as admitted in the Return have been filed. It is the case of the State Government that tax admitted has not been paid and in some cases it is stated that after deposit of the application tax dues have been cleared and that also not completely.

There is serious dispute on factual aspects of the matter and a preliminary objection is raised by the State Government to say that a statutory remedy of revision to the Commissioner of Commercial Taxes (Administration) under Section 73A of the Bihar VAT Act, 2005 being available in the facts and circumstances of the case interference should not be made.

We have considered the rival contentions and on going through the detailed judgment in Tata International (supra), we find that in the aforesaid case the learned Court has referred to Section 8(4) of the Central Sales Tax Act and the Central Sales Tax (Bihar) Rules, and it is indicated that the statutory requirement which is only required to be seen when a Form-C certificate is sought for is as to whether the dealer has filed all the Returns and has paid the taxes as admitted in the Return. In the case of Tata International (supra) as this statutory provision under Section 8(4) of the Act and the Rules was complied, the law laid down is that for the purpose of recovery or for the purpose of executing an order imposing duty, Form-C cannot be denied. However, in the present case, from the counter affidavit and other materials available on record, there seems to be serious dispute between the parties as to whether the tax as admitted in the Return was ever paid or not. Even though Shri Pathi by referring to the Return and other various documents tried to submit that all the admitted taxes have been paid, we are of the considered view that we cannot go into the assessment of this dispute in this petition by evaluating the documents, the Return and then rejecting the contentions of the State Government that the admitted taxes have been paid. This is a function which can more appropriately be dealt with by the competent authority of the Department and when a statutory remedy of revision is available, this exercise can very well be undertaken by the revisional authority and that being the position in this case, we are of the considered view that the judgment rendered in the case of Tata International (supra) cannot be applied in the facts and circumstances of the present case. With regard to the factual aspect pertaining to deposit of admitted tax as reflected in the Return itself is in dispute.

Accordingly, we uphold the preliminary objection raised by the respondents and direct the petitioners to take recourse to the statutory remedy available under Section 73A of the Bihar VAT Act, 2005. In case revision petition is filed before the statutory authority within a period of 30 days from today, the statutory authority shall consider the revision on merit and shall not reject it on the ground of delay.

With the aforesaid, these writ petitions are dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05.09.2017
Transmission Date	N.A.