IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4300 of 2015

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M/s New Swadeshi Sugar Mills, Proprietor The Oudh Sugar Mills Limited At & P.O. Narkatiaganj , Distt. West Champaran , through its Executive Vice President (Commercial) Sushil Kumar Poddar, son of Sri Madan Lal Poddar.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary , Government of Bihar, Patna.
2. The Secretary-cum-Commissioner of Commercial Taxes, Government of Bihar, Patna.
3. The Deputy Commissioner (Incharge) , Commercial Taxes, Bettiah Circle, Bettiah, Bihar
4. The Assistant Commissioner, Commercial Taxes , Bettiah Circle, Bettiah, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y V Giri, Sr. Advocate
		Mr. Ashish Giri, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, Advocate General
		Mr. Vikash Kumar, SC 11
		Mr. Sriram Krishna, AC to SC 11

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 18-09-2017

Challenging the notices issued to the petitioner raising demand for payment of duty and further contending that the petitioner is not liable to file a return as the provision of Section 6B(1) and 5A of the Bihar State Electricity Act, 1948 (hereinafter referred to as “Act of 1948”) is not attracted in the case of the petitioner and was not liable to pay electricity duty on supply of electricity to the Bihar State Electricity Board, this petition has been filed under Articles 226 and 227 of the Constitution of India.

While by inviting our attention to the principles of law laid down by the Division Bench of this Court in **M/s NTPC vs. State of Bihar [2017 (2) PLJR 575],** learned counsel for the petitioner argued that as the petitioner is supplying electricity to the Electricity Board which is a licensee under Section 2(d) of the Act of 1948 and, therefore, the petitioner is not liable to pay duty, however, learned counsel for the State points out that the petitioner did not file any return the question as to whether the petitioner is exempted under Section 5A itself is a dispute on fact which will depend on the nature of transaction made by the petitioner with the Electricity Board and as against the assessment order passed the petitioner has remedy of filing appeal under the statue itself exercising extra-ordinary jurisdiction in this case is not proper.

Learned counsel for the petitioner further points out that the case of the petitioner along with the cases decided, i.e. CWJC No. 17429 of 2014 and CWJC No. 17306 of 2014 and other cases of the year 2015 but in view of the peculiar facts of this case as remedy of appeal was available this case was not decided along with them.

Having considered the contentions we find the question as to whether the petitioner itself liable to file the return and what is the nature of supply made by the petitioner to the Bihar State Electricity Board and the nature of transaction is a dispute which warrants consideration based on enquiry of facts and once there is a statutory remedy available to the petitioner we are not inclined to allow this petition. However, granting liberty to the petitioner to take recourse to the remedy of appeal we dispose of the writ petition.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

AFR/NAFR	NAFR
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