IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15160 of 2017

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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.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.
For the Respondent/s	:	Mr. Lalit Kishore - AG

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-11-2017

Petitioner questions the non-grant of Form-C, primarily on the ground that the application has been 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, learned counsel for the petitioner argued that the case is squarely covered by the judgment rendered in the case of Tata International Limited (supra). It is argued 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).

It is the case of the State Government that tax admitted has not been paid.

There is serious disputed 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 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 by referring to the Return and other various documents learned Counsel 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 provisional 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 when 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, this writ petition is dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.11.2017
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