IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3330 of 2018

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Imperial Agro Pvt. Ltd., having its Registered Office at N.H.- 28, Netaji Chowk, Kanti, P.S. Kanti, District Muzaffarpur, Bihar, through its Managing Director Uday Shankar Ojha, son of Late Shiv Layak Ojha, Resident of Mohalla- Shiv Nagar, P.S. Beur, District Patna, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
2. The Joint Commissioner, Appeal, Commercial Taxes, Tirhut and Saran Division, District Muzaffarpur, Bihar.
3. The Deputy Commissioner Commercial Taxes, Muzaffarpur West, District Muzaffarpur, Bihar.
4. The Commercial Tax Officer, West Circle, Muzaffarpur, District Muzaffarpur, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-02-2018

Seeking a limited indulgence by this Court with regard to coercive action initiated by the respondent revenue in the matter of recovery of penalty by attaching the Bank Account of the petitioner in respect of the fact that an appeal filed by the petitioner is pending before the competent Appellate Tribunal but hearing of the appeal and the stay application is not possible on account of non-availability of the Chairman and functioning of the tribunal properly, the petitioner has approached this Court seeking indulgence exercised in this petition under Article 226 of the Constitution limited to the purpose to restrain the respondents from taking coercive action till hearing, at least, on the stay application of the petitioner is granted by the Appellate Tribunal.

Having heard learned counsel for the parties, we find that after the impugned order was passed on 11.01.2018 the petitioner preferred an appeal before the Commercial Taxes Tribunal, Bihar, Patna on 08.02.2018 along with an application for stay and the application for stay in the appeal is yet to be taken for hearing by the Tribunal. Hearing before the Tribunal is not possible because no Chairman has been appointed by the Government and the Tribunal, as on date, is not functional.

In the meanwhile by the impugned notice (Annexure-3) dated 30.01.2018 the petitioner was directed to deposit the entire amount of penalty, i.e. Rs. 5,54,143/- for the year 2013-14 and Rs. 32,35,027/- for the year 2014-15 on or before 06.02.2018, failing which it was said that coercive action shall be taken and consequently it is informed that after filing of this petition the entire Bank Account of the petitioner has been seized.

Even though Sri Vikash Kumar, learned counsel for the respondents, vehemently opposed the prayer made in the Writ Petition and submitted that the petitioner should deposit some amount pending finalization of the appeal.

We are of the considered view that when there is no statutory provision warranting pre-deposit of any amount as a condition precedent under the statute for filing of an appeal and when the appeal of the petitioner is not being heard on account of non-functioning of the Tribunal, at least, till a hearing is granted to the petitioner by the Tribunal coercive action by the department should be kept in abeyance as the petitioner cannot be made to suffer on account of the lapses on the part of the Government for not making the Tribunal functional.

In view of the aforesaid, we direct that till the orders are not passed by the Commercial Taxes Tribunal on the appeal filed by the petitioner or on the application for stay filed by the petitioner, all coercive actions initiated against the petitioner now shall be kept in abeyance and the Bank Account of the petitioner which has been attached, if any, shall also be released till the orders are not passed by the Commercial Taxes Tribunal, Bihar, Patna.

With the aforesaid, the matter stands disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	26.02.2018
Transmission Date	