IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4693 of 2018

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M/s Shree Infra having its office at 1, Surya Apartment, Gandhi Maidan, Patna- 800 001 through its Proprietor namely Kisan Damani, son of late Nand Kumar Damani, Resident of Sita Bhawan South Gandhi Maidan, Patna.

... ... **Petitioner/s**

Versus

1. The State Of Bihar through the Principal Secretary-cum-Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, New Secretariat, Patna.
2. The Commissioner of Commercial Taxes, Bihar, Patna New Secretariat Bailey Road, Patna.
3. The Additional Commissioner of Commercial Taxes, Bihar, Patna New Secretariat Bailey Road, Patna.
4. The Deputy Commissioner of Commercial Taxes, Gandhi Maidan Circle, Patna.

... ... **Respondent/s**

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Appearance :
For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr. Vikash Kumar -SC11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-03-2018

Having heard learned counsel for the parties, we find that the Commissioner of Commercial Taxes, Bihar, Patna, while passing the impugned order, Annexure-3, on 23.02.2018 has not discharge his statutory duty in accordance to the requirement of law in the matter in question when the judgment of this Court in case of **Shell India Markets Pvt. Ltd**. Versus State of Bihar (CWJC No.7623 of 2015) was brought to his notice. He has only made an observation that the law laid down in the case of **Shell India Markets Pvt. Ltd** (supra) will only apply in the said case and cannot be of universal application. We are constrained to hold that the approach of the Commissioner of Commercial Taxes, Bihar, Patna cannot be appreciated. The judgment rendered by the Division Bench of this Court in the case of **Shell India Markets Pvt. Ltd** (supra) is a detailed judgment laying down various principles of law in the matter of recovery of entry tax once the VAT has been paid and, therefore, the legal principles in the said case should be made applicable in all the cases and considered. That apart, the judgment in the case of **Shell India Markets Pvt. Ltd** (supra) is based on an earlier judgment of the Division Bench in the case of **United Breweries Ltd. Vs. State of Bihar and others,** (2006) 143 STC 106. The Commissioner of Commercial Taxes, Bihar, Patna should have taken note of both the judgments and the principles of law laid down that will be made applicable universally in all the cases.

We are informed that the Circular issued by the Department indicating that the law laid down in the judgment **Shell India Markets Pvt. Ltd** (supra) will apply in the said case has been heard by a co-ordinate Bench of this Court and the Department was directed to reconsider the matter. In this case, we do not appreciate the manner in which the revision is disposed of. Once the judgment in the case of **Shell India Markets Pvt. Ltd** (supra) was brought to the notice of the statutory appellate authority, the statutory appellate authority has to take note of the legal principles laid down and apply it in the facts and circumstances of the present case. Causally without application of mind holding that the judgment in the case of **Shell India Markets Pvt. Ltd** (supra) will not be made applicable in other case and will only apply in the case of the parties is not the correct approach to be made by the appellate authority.

Keeping in view the aforesaid, we allow this petition, quash the order dated 23.02.2018 and direct the appellate authority, namely the Commissioner of Commercial Taxes to reconsider the issue and after taking note of the principles laid down in the case of **Shell India Markets Pvt. Ltd** (supra), decide the revision of the petitioner afresh in accordance with law by a speaking order.

Till the revision is not decided afresh as directed hereinabove, no coercive action shall be taken against the petitioner for recovery of any due.

With the aforesaid, the writ petition stands allowed and disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.03.2018
Transmission Date	