IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5696 of 2018

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Patanjali Ayurved Ltd., a Company incorporated under the Companies Act, 1956 having its office at Devkinandan Complex Campus, Sabalpur, Didarganj, Patna City, Patna through its authorized signatory Vikas Kumar Singh, son of Sri Jitendra Kumar Singh resident of village Barawa PO Barawa PS Daudpur, District Saran (Chhapra)

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna
2. Joint Commissioner of Commercial Taxes (Appeals), Central Division, Patna
3. Assistant Commissioner of Commercial Taxes, Special Circle, Patna

…. Respondents

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy

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: 28-03-2018

Challenging the interlocutory order Annexure-3 dated 20th March, 2018 passed by the Joint Commissioner of Commercial Taxes (Appeals), Patna, in the matter of making certain direction with regard to pre-deposit to be made for hearing of the appeal and directing deposit of 33% of the tax due, this writ petition has been filed under Articles 226 and 227 of the Constitution primarily on the ground that no tax is liable to be paid and, therefore, the interim direction to pay 33% of duty is unsustainable.

Against a tax liability of Rs.12,56,88,160/-, the appellate authority has directed to pay a sum of Rs.4,18,96,053/- on or before 28.03.2018 and has stayed the recovery of the remaining amount of Rs.8,37,92,107/- pending finalization of the appeal and listed the appeal for final hearing on 22.05.2018. Inter alia, contending that the petitioner is not liable to pay any tax and the demand raised and the assessment order passed is unsustainable as the petitioner has already paid tax in accordance to the declaration made on the basis of *e-suvidha* and, therefore, not liable to pay any amount the writ petition is filed.

Having heard learned counsel for the parties we are of the considered view that at this stage when the appeal filed by the petitioner is pending consideration before the appellate authority and the matter is listed on 22.05.2018 with regard to the merit of the dispute and the petitioner to pay the tax indulgence into the matter at this stage is not called for. This is a question which has to be and will be considered by the appellate authority while hearing the appeal. As far as the direction issued for pre-deposit is concerned, the discretion exercised by the appellate authority and only directing to pay 33% of the due and staying recovery of the remaining amount is a reasonable decision and we see no error in the same warranting interference. It is not the case of the petitioner that they are unable to pay the pre-deposit amount due to financial constraints or any other reason which can be considered at this stage, on the contrary, the entire arguments advanced with regard to the merit of the matter pertaining to liability of the petitioner to pay duty. This aspect cannot be enquired into at this stage when the same is sub-judice before the appellate authority.

Accordingly, we are not inclined to interfere into the matter at this stage. The petition stands dismissed with liberty to the petitioner to raise the grievance before the competent appellate authority where the appeal is pending.

However, the pre-deposit amount shall be deposited by the petitioner within 15 days and till then no coercive action for recovery of the said amount shall be taken nor the appeal dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.03.2018
Transmission Date	